DISABILITIES OF AMERICAN WOMEN MARRIED ABROAD.

CONFLICT OF FOREIGN TREATIES WITH STATE LAWS.

W. B. LAWRENCE.

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DISABILITIES OF AMERICAN WOMEN MARRIED ABROAD.

FOREIGN TREATIES

OF THE

UNITED STATES

IN CONFLICT WITH STATE LAWS RELATIVE TO THE TRANSMISSION OF REAL ESTATE TO ALIENS.

APPENDIX:

CONVENTIONS OF NATURALIZATION AND FOR THE ABOLITION OF THE DROIT D'AUBAINE.—MARRIAGE LAWS OF VARIOUS COUNTRIES, AS AFFECTING THE PROPERTY OF MARRIED WOMEN.

BY

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ADVERTISEMENT.

In preparing this *brochure* for the press, our original intention was merely to present, in an accessible form, the letter which we addressed last year to Governor Hoffman, soliciting his attention to an anomaly in the laws of New York, by which female citizens of the United States were subjected by the act of contracting foreign marriages, to the disinherison of their offspring, while no such consequences followed to his descendants from the marriage abroad of a male citizen.

In the course of our investigations, we could not but remark that the operation of the Naturalization Convention had been thoroughly examined by the ablest jurists of England, and, that in advance of the conclusion of the treaty, important legislative changes, to meet the alterations which it was foreseen it must induce in the existing laws, were made by Parliament; while, on the other hand, no attention has been given in the United States, either by Congress or the State legislatures, to the questions respecting descent, succession, title to property, and other matters connected with the political *status* of individuals, to which our Expatriation Act and the conventions entered into not only with Great Britain, but with Germany and other States, must inevitably give rise. Nor do they, indeed, appear to have ever been considered by American jurists and publicists.

It is not merely the interests of American women married abroad, who are divested of all nationality, other than that of their husbands, and subjected to the same disabilities of alienage, which already existed on the part of their children, that will be affected by the new international code. No double nationality being longer permitted, there can be no descent or succession of real property, where the rules respecting alienage are maintained, from or to members of the same family established in different countries; while, as the treaties permit a naturalized citizen to resume his original nationality at pleasure, or by complying with certain prescribed formalities, and again to change it, as his temporary interests may dictate, it is evident that, without the entire abrogation of the *droit d'aubaine*, titles to real estate must be exposed to inextricable confusion. Moreover, in directing our attention to the conventions which the United

States have made with several States for allowing, in a modified way, the transmission of real estate to aliens, despite of State laws, we could not but recognize the existence of serious doubts as to the constitutional right of the Federal Government to regulate, by treaty, without the consent of the States, matters so exclusively of State cognizance as the succession and descent of property.

We have, therefore, deemed it advisable to insert in the appendix, the documentary matter which has hitherto attracted little notice, on which our conclusions are based. The Expatriation Act, in connection with our naturalization laws, as well as the corresponding provisions of the English law, including those for the readmission of a subject previously denationalized, as contained in the Naturalization Act of 1870, will all be found there. We have brought together the naturalization treaties, and the conventions respecting the abolition, or rather modification, of the *droit d'aubaine;* and we have also given a synopsis of the laws of the States as to alien disabilities.

We have added, in a second appendix, the remarks respecting the marriage laws of various countries, as affecting the property of married women, which we had occasion to make at the Congress of 1869 of the (British) Social Science Association, in discussing the Married Women's Property Bill, then the prominent topic of debate. They are here reproduced, as published at the time, the subject being one intimately connected with the intermarriages of our female citizens with foreigners.

W. B. LAWRENCE.

OCHRE POINT, NEWPORT, RHODE ISLAND,
November, 1871.

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PRELIMINARY REMARKS.

"As to the right of the children or nearest relatives of the deceased to inherit, its origin," says the able annotator, who has adapted the Commentaries of Blackstone to the existing laws of England, "is to be traced to a higher source than the mere institutions of civil society. There is a general and intuitive feeling that it has nature on its side, and there seems in truth good reason to refer it to the same natural title of occupancy on which the right of property itself is founded." (Stephen, New Commentaries on the Laws of England, vol. I, p. 169.)

The earliest acts of the New York Legislature, after the war of the Revolution, not only abolished primogeniture, but they professedly abrogated all distinctions as to the descent of real estate between males and females. The general policy of the State, moreover, for several years past, has been to do away with the common law disabilities of coverture, and to place married women, whether native or foreign born, domiciled in the State, in the uncontrolled use and disposition of their property, of whatever kind, with the power of bequeathing and devising it at their death.

Indeed, the recent legislation has gone further than exact justice between the parties to the marriage would seem to authorize. While the wife has the entire usufruct of her own property, the obligation to maintain the family rests, as before, exclusively with the husband; she also retains, inalienable, except with her own consent, her right of dower, while it is always in the power of the wife to divest, by her own act, the curtesy of the husband.

But, though nothing further may be required to perfect the civil rights of married women, who remain in their own country, the position of those who, in the legitimate pursuit of their own happiness form foreign matrimonial alliances, is far different. Their marriage, according to the present law of New York, in respect to alienage, may, in the cases where, by the recent treaties of naturalization, the nationality of a married woman becomes that of her husband, operate as an absolute forfeiture of her claims to the real estate of her parents or other relatives, situate in that State, so that it will pass to the relatives of the deceased, who are citizens of the United States, however remote. At all events, if she herself be capable of taking real estate by descent or devise, her issue, if their father is a citizen or subject of any foreign country, whether the United States have or have not a naturalization treaty with it, cannot succeed to the mother's real estate in the State of New York, even though she may have inherited it from her own ancestors.

The primary object of the letter addressed last year to Governor Hoffman, was to solicit his intervention with the Legislature, at the then approaching session, to assimilate the rule as to the descent of real estate in the cases of female citizens and their descendants, the issue of foreign marriages, to that which applies in like circumstances to male citizens married abroad and their descendants.

The tendency to which we have alluded of the legislation of New York, in common with that of most of the States, of placing women, including married women, on an equality with men, as regards their property, real as well as personal, has been so uniform that the disinherison of their offspring, under circumstances which would not apply to the descendants of male citizens, could exist, it was supposed, only from the fact that the subject had not been brought to the attention of the competent authorities.

To effect a remedy for the particular grievance here referred to, a law similar to the English statute of 1844 (7 & 8 Vict. c. 66), might, before the conclusion of the naturalization treaties, have sufficed. By that law, as is elsewhere explained, every person born of a British mother, though he is not made a British subject, is rendered capable of taking real or personal property, by devise, purchase, inheritance or succession.

As, however, not only had Congress passed, in 1868, a law recognizing expatriation and emphatically repudiating all the judicial decisions of the federal and State

courts based on the idea of a double allegiance, but as the same principle had been incorporated into the several naturalization treaties since concluded between the United States and those European powers with which we have the most intimate connection through emigration and inter-marriages, and, as the naturalization effected by a foreign marriage might place the American woman under the same disabilities as her children now confessedly are, it seemed to the writer that any partial legislation of the character suggested might be inadequate to the end proposed.

Indeed, even before the conventions in question, it was held, by Attorney-General Stanbery, that, as between nations, a woman, whose father was an American citizen, and who, though born in France, had not taken the measures required by the law of that country to claim the quality of a Frenchwoman (Code Civil, art. 9), but who had acquired, by her marriage with a Frenchman, the condition of her husband (*Ib.*, art. 12), did not, when a widow, and continuing to reside in France, become reinvested with the quality of a citizen of the United States. (Mr. Stanbery to Mr. Seward, August 13, 1866. Opinions of the Attorney-Generals, vol. XII, p. 7.) There is no allusion in this case to a double allegiance.

The most eminent British jurists having given it as their opinion that the changes, introduced by the statute of May 12, 1870 (33 Vict. c. 14), were indispensable preliminaries to the entering by Great Britain into a naturalization convention, and the same changes being supposed

requisite in the law of the American States, which, to use the language of the British Commissioners, "had inherited rather than adopted the English common law," it was conceived that the exigency of the case, in all its parts, might be best met by the passage of a law based on the English statute.

It should be noted in this connection that by the Civil Code of the State of New York, as reported complete by the Commissioners (Messrs. Field and Bradford) in 1865, though it has not been passed on by the Legislature, it is provided:

"§ 170. Any person, whether citizen or alien, may take, hold and dispose of property, real or personal."

This provision is said to be in accordance with the recommendation of the then governor in his message of January, 1862.

"§ 660. Aliens may take in all cases by succession, as well as citizens; and no person, capable of succeeding under the provisions of this chapter, is precluded from such succession, by reason of alienage of any relative."

"§ 637. Succession is the coming in of another to take the property of one who dies, without disposing of it by will."

The first clause of § 660 is new, and, had the Code become a law, would have rendered unnecessary the present discussion. The remainder of the section is taken from the Revised Statutes of 1830, vol. I, p. 754,

§ 22, where it was first inserted. (Civil Code of the State of New York, 1865, pp. 55 and 192.)

The decision of the case, argued before the twelve judges of England, of Collingwood *v.* Pace (Ventris's Reports, vol. I, p. 413), which, contrary to the doctrine of Coke in his Commentaries on Littleton (Coke on Littleton, 8 a), declares the descent between brothers immediate as from father to son, and therefore not impeded by the alienage of the father, has not only been recognized as the common law of New York, but it has been decided that the rule holds equally as between one brother and the representative of another and between the representatives of both of them. (McGregor *v.* Comstock, New York Reports, vol. VIII, (Comstock, vol. III) p. 409.)

But the statute, 11 and 12 Wm. III., ch. vi, which enabled parties to inherit, notwithstanding their ancestors through whom they derive title were aliens, was not adopted in New York. Thus in a case which arose before the Revised Statutes, though decided afterwards, it was held, when a person seized of real estate died intestate without issue, leaving a brother who had been naturalized and a nephew who had also been naturalized, but whose father had died an alien, that the brother was entitled to the whole estate. (Jackson *v.* Fitzsimmons, Wendell's Reports, vol. X, p. 11; see, also, Jackson *v.* Green, *Ib.*, vol. VII, p. 339.)

The section inserted by the revisors, they say, was intended to change a very harsh rule of the existing

law by which a person, not an alien himself, may sometimes be debarred from inheriting. (Revisors' Reports and Notes, New York Statutes at Large, vol. V, p. 343, ed. 1863.) But, as it does not authorize the deduction of title through an alien ancestor still living, it does not always meet the evil intended to be remedied and may create a greater one.

The case, indeed, referred to by the Commissioners of the Code in this connection (McCarthy *v.* Marsh, New York Reports, vol. V (Selden, vol. I), p. 266), strongly illustrates this position. In that case, the only relatives of the decedent who died in 1835, who appear to have been citizens of the United States, except the plaintiff, were children of his niece. They had been naturalized; but the mother was an alien still living, though residing, as were her children, in the city of New York. In 1836, an act was passed, in conformity with the presumed wishes of the decedent, releasing to the widow, for the benefit of herself and of the niece, all interest acquired in his real estate by the State by escheat. In 1843, a suit was brought by the plaintiff, who was naturalized in 1834, and who claimed to be the heir-at-law. He was a great-grandson of the brother of the grandfather of the decedent; all the ancestors of the decedent, as well as those of the claimant, died aliens. It was held that he was entitled to the estate. Had it not been for the Revised Statutes, the release by the State of the title, by escheat, would have allowed the property to pass as the decedent intended.

The disability of alienage was not removed by the new law from the niece, and her being alive at the time of the decedent's death, excluded from the inheritance her children, though naturalized citizens, and who, had she been dead, would have been the heirs of the decedent. Thus, in consequence of a provision professedly intended to remove a harsh rule of the common law, the estate passed from those in whom the decedent had a direct interest to a remote relative, whose very existence was probably unknown to the person whose heir the law proclaimed him to be.

In another case decided in the Court of Appeals, in 1856, it was held that the Statute (1 Revised Statutes, p. 754, § 22), does not enable a person to take an estate by inheritance who deduces title by descent through a living alien relative of the deceased, who would himself inherit the estate were he a citizen. Accordingly, where the decedent left surviving him a sister and a niece, her daughter, the former an alien and the latter a citizen, the niece did not take the real estate by inheritance. (McLean and wife *v.* Swanton, New York Reports, vol. XIII (Kernan, vol. III), p. 535.)*

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* No better answer could be given than is afforded by the case of McCarthy *vs.* Marsh, to the suggestion that a repeal of the alien disabilities might tend to create confusion in titles. Many foreigners, it is said, especially from Ireland, where there are not, as on the continent of Europe, official registries of births and marriages, whose genealogy is obscure, emigrate to the State of New York, and there acquire real estate. On their death, it was added, claimants might appear from abroad and enter on the estate and convey it, and their titles, to the prejudice of their

It is scarcely necessary to observe, that, allowing foreigners to hold land, in nowise affects the rule of descent, which is always that of the country where the real estate is situated. Thus, if an American purchases real estate in England, it will, while the law remains as it is, pass, in case of intestacy, to his eldest son. On the other hand, if an Englishman buys land in the United States, it will descend, according to the law of descent in the State in which it lies, which now everywhere gives it, in case of intestacy, equally among all the children. In France, the law which disposes, by a fixed rule, of the succession to real, as well as personal, property, leaving only a portion of it subject to the testament of the decedent (code Civil, Arts. 913, 919), is as applicable to the real estate of a foreigner in France as to that of a French citizen.

It is proper here to guard against the misapprehension under which the Senate of the State seem, at their last session, to have acted, as to the motive for the proposed law. Neither in pleading the cause of natural affection, nor in suggesting the necessity of conformity of the law of real estate to treaties, has there been

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grantees, might be subsequently divested by the appearance of nearer relatives.

We cannot attach much force to this specious objection, as opposed to the weighty reasons for the abrogation of all the incidents of the *droit d'aubaine*. But whatever importance might otherwise be given to it, the case in question shows that under the law, as it now exists, not only is there equal embarrassment in ascertaining the genealogy of a naturalized citizen as of an alien, but there is superadded the further difficulty of determining whether the alien ancestors of the former were living or dead at the time of the decedent's death.

any intention to enter into a discussion of the general policy, independently of the naturalization conventions, of allowing foreigners to acquire and transmit land, however clear our own conviction may be of the truth of the great doctrines of economical science on this subject, now nowhere questioned, save in some of the States of the American Union. Nor shall we attempt to determine, from the conflicting opinions cited in our letter, the constitutional question, how far it is competent for the federal power to interfere by treaty, where foreigners are concerned, with the tenure of land in a State. The object has been merely to point out the unjust discrimination between the descendants of male and female citizens, and the anomalies, caused by the legislation of Congress, and by the conventions with foreign powers, in the existing law of New York; and to show that they can best be removed by adopting substantially the recent English statute, that is to say, by an abrogation of all alien disabilities.

State laws have no control over the political *status* of its inhabitants, and the Expatriation Act of Congress and the naturalization conventions, while repudiating the doctrine of double allegiance, permit a person to change his nationality as often as he pleases. As a consequence of these measures, it is almost impossible to determine, at any given time, whether a party is an alien or a citizen, and therefore, as long as alien disabilities continue, all titles to real estate must be exposed to infinite confusion. Moreover,

the foreigner, exceptionally authorized to hold real estate in New York, has a privilege denied to the American parent, native or naturalized, of transmitting his property, in conformity with the dictates of natural affection, and, according to the latest decision of the Court of Appeals, this may be done, as will appear in the sequel, by an alien, under the act of 1845, even when he has not filed the deposition prescribed by the Revised Statutes, declaring that he is a resident, and that he has taken the initiatory steps to be a citizen of the United States.

Letter to Governor Hoffman.

Ochre Point, Newport, R. I.,
December 26, 1870.

To his Excellency John T. Hoffman,
Governor of the State of New York:

Dear Sir: When I had the pleasure of seeing you here last summer, I took the liberty of soliciting your attention to the anomalous condition in which the laws of the State of New York, as to the holding and transmission of real estate, placed the descendants of American women married abroad, and you were kind enough to say that you would take into consideration, with a view to their submission to the Legislature, such suggestions as I might have it in my power to make to you on the subject.

At the same time, I referred to the conventions between the United States and several foreign coun-

tries, which, without a total abrogation of the "*droit d'aubaine*," or the disabilities imposed by the common law on the descent of lands, might affect, not merely political rights, but, in a manner little anticipated, the transmission of property according to the claims of consanguinity as hitherto recognized.

I may be permitted to premise that it is a well-settled principle of the common law, which in this respect, is still in force in New York, that an alien cannot derive title to real estate by descent or mere operation of law. The general rule, however, was that if an alien purchased land, or it was devised to him, he might take and hold it until office found.

The statute carries the disability further, and provides that "every devise of any interest in real property to a person who, at the time of the death of the testator, shall be an alien not authorized to hold real estate, shall be void."

In such case the land does not, except in default both of heirs and residuary devisees competent to take, escheat to the State, "The interest so devised," the statute adds, "shall descend to the heirs of the testator; if there be no such heirs competent to take, it shall pass under his will to the residuary devisees therein named, if any there be, competent to take such interest." (Revised Statutes, vol. II, p. 58, § 4.)*

* "In the case of a devise to a alien, who is not authorized, by any general or particular statute to hold real estate, such devise is declared by

Such is the general law, and if others than citizens can take or transmit real estate, by descent or devise, it must be in consequence of the express authorization of the Legislature, or by virtue of conventions with foreign States, if, indeed, it be within the scope of the treaty-making power of the federal government to make stipulations affecting matters exclusively of municipal cognizance. But though it may depend entirely on a State to determine whether aliens shall be permitted to hold lands within its territory, the Constitution of the United States, by confiding to Congress the exclusive power of naturalization, has left it to that body to determine who are aliens.

"The right of citizenship, as distinguished from alienage, is a national right; it appertains to the confederate sovereignty of the United States, and not to individual States." (Lynch *v.* Clark, Sandford's Chancery Reports, vol. I, p. 583.)

By existing laws of the United States, the children of an American male citizen born abroad, are, irrespective of the nationality of the mother, American citizens, and consequently, though they themselves may never reside in the United States, competent to hold and transmit real property within the State of New York.*

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a provision in the Statute of Wills to be void; and the interest or estate so devised descends to the heirs of the testator, if there b e any, and if not then it will go to the residuary devisees, if they are competent to take. In this respect the Revised Statutes have changed the common law by a provision which is free from all doubt." (Wright *v.* Saddler, New York Reports, vol. XX (Smith, vol. VI), p, 326.)

* The terms of the act of Feb. 10, 1855, are, "Persons heretofore born,

On the other hand, the children of an American woman married to an alien derive no rights of citizenship from the nativity or nationality of their mother. In accordance with federal legislation they are aliens, and by the application of the State laws imposing disabilities on aliens, incapable of taking the real property which has descended or been devised to their mother, or to which they would be entitled, in right of their mother, from her parents or other relatives, by the general law of descents.

Indeed, as will appear in the sequel, it may well be questioned whether an American woman married to a subject of one of the countries with which the recent naturalization treaties have been made, and whose laws regard the marriage of a woman as a mode of naturalization, has not herself lost her capacity as an American citizen, to take and hold real property within the State of New York.

A devise, it is true, to trustees of lands to sell and pay the proceeds to an alien has been construed, even in States which do not permit aliens to hold real estate, to be a bequest of personality, and may be enforced

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or hereafter to be born, out of the limits and jurisdiction of the United States, whose *fathers* were, or shall be at the time of their birth, citizens of the United States, shall be deemed and considered, and are hereby declared to be citizens of the United States: *Provided, however*, that the rights of citizenship shall not descend to persons whose fathers never resided in the United States." The same act provides that "any woman, who might lawfully be naturalized under the existing laws, married, or who shall be married to a citizen of the United States, shall be deemed and taken to be a citizen." (United States Statutes at Large, vol. X, p. 604.)

against the trustees. (Wheaton's Reports, vol. III, p. 563, Craig *v.* Leslie; Paige's Reports, vol. VI, p. 448, Anstice *v.* Brown.)

But why should a parent be compelled to change the patrimony of a child from a perfect security to one exposed to all the contingencies of personal investments, and to call in the intervention of third parties? That there is no motive of public policy involved in the continuance of the system may be inferred not only from the several exceptional acts allowing aliens to take and transmit real estate to alien heirs, but from the fact that where land would escheat to the State from the alienage of those otherwise entitled to it, the invariable practice has been for the legislature to release the claim.

Though, as respects the claim of the State, the disability of alienage may not be practically important, it is otherwise when the pretensions of different members of the same family are brought in conflict.

In the case of the descendants of a daughter married abroad on the one side, and of a son married abroad on the other (not to speak of the children of sons and daughters married at home), the first named are utterly excluded, to the benefit of the latter, whether the ancestor dies intestate or not, though they all possess equal claims from consanguinity.

A case most apposite to illustrate the anomalous operation of the existing laws is furnished by the adjudications on the testamentary dispositions of the late Mr. Wadsworth, of Geneseo. He had devised lands in

trust for the use of his daughter—a citizen and then unmarried—for life, with remainder in fee to her issue. The daughter married, subsequently to her father's death, an alien, and died leaving a son born in Egypt, where her husband was in the public service of Great Britain. The court decided that the disability as to alienage applied only to a person who, *at the time of the death of the testator*, shall be an alien, and as young Murray was not then born, he could not be within the terms of the statute, that the case must be governed by the common law, and that he was capable, though an alien, to take the remainder in fee, under the will, and hold it until office found.

The inevitable inference from this decision is that if Mrs. Murray had been married, and her child been born before his grandfather's death, the statute would have applied, and that her child would, so far as regards his mother's share of her father's property, devised for the benefit of her issue, have been utterly disinherited, and the interest intended for her would, as the statute which I have quoted shows, have descended to the heirs of the testator, who were citizens of the United States, that is to say, to Mrs. Murray's collateral relatives. A proof how repugnant such a result would have been to the general sentiment of the community is found in the fact that the adult heirs of Mr. Wadsworth thought it requisite for their reputation to induce the reporter to insert a note, saying that they were willing to confirm the title of the son of Mrs.

Murray under the will, by release to him, but that the existence of minor heirs rendered the appeal necessary. The claim of the State had been, as usual, released to Mrs. Murray's son, thus confirming our previous assertion that no pecuniary benefit results to the public treasury from interfering with the transmission of property in accordance with the impulses of natural affection. (See New York Reports, volume XII (Kernan, volume II), page 376, Wadsworth *v.* Wadsworth; also Wright *v.* Saddler, *Ib.*, vol. XX (Smith, vol. VI), p. 326.)

Nor is it any mitigation of the injustice, as between the members of the same family, that aliens enjoy and have enjoyed in the transmission of their real estate privileges denied both to native born and naturalized citizens.* I would particularly refer to the act of 1798, and acts explanatory of it. The act of 1798 (New York Statutes at Large, ed. 1863, vol. IV, p. 294), required no residence, and did not contemplate naturaliza-

* The following is the provision of the treaty of November 10, 1794, with Great Britain:

"ARTICLE IX.—It is agreed that British subjects who now hold lands in the territories of the United States, and American citizens who now hold lands in the dominion of his Majesty, shall continue to hold them according to the nature and tenure of their respective estates and titles therein; and may grant, sell or devise the same to whom they please in like manner as if they were natives; and that neither they, nor their heirs or assigns shall, so far as may respect the said lands and the legal remedies incident thereto, be regarded as aliens."

This provision, applying, as it did, to the titles existing at the period of the revolution, is an affirmance of the rule of the law of nations, that the dismemberment of the Empire works no forfeiture of previously vested rights.

tion. By it a conveyance made to an alien friend vested the estate in him, and he might hold it to his *heirs and assigns for ever, any plea of alienage to the contrary notwithstanding.* It has been repeatedly decided in the State courts, one of the cases having been before the Court of Appeals so late as 1852, that an alien heir may take, by descent from an alien, who was, by the statute of 1798, entitled to hold the property, and that alien heirs of grantees might take in succession from one another. The statute bestows on the land the quality of being inheritable by aliens until by inheritance, grant, or devise, it comes to a citizen, when, it might be added, the disabilities incident to the estate of a citizen again apply. (New York Reports, vol. VII (Selden, vol. III), p. 305, Duke of Cumberland *v.* Graves. See, also, New York Reports, vol. XII (Hand, vol. II), p. 412, The People *v.* Snyder, December, 1869, Opinion of Woodruff, recognizing the rule in that case).

Without noticing the intermediate acts, including the general provision of the Revised Statutes in favor of aliens who file depositions in the office of the Secretary of State, declaring that they are residents, and have taken the initiatory steps to be citizens of the United States (New York Statutes at Large, vol. I, p. 668, ed. 1863), I would here allude to the act of April 30, 1845 (*Ib.*, vol. IV, p. 300), which has been recently construed by the Court of Appeals to give "to a resident alien (even though he has not filed the deposi-

tion) who takes title by grant of real estate, the same power of transmitting such title by descent as a citizen." The court expressly rejected the suggestion that the term resident alien applied only to aliens who had filed the prescribed depositions, which confessedly the alien in question had not done. He had left three children surviving him, two sons and a daughter, all of full age at the time of his death, residents in and subjects of Great Britain, none of whom had ever resided in the United States, or filed the deposition which, by the terms of the act itself, the persons answering the description of heirs, are required to file, if males of full age, and not citizens of the United States. He also left surviving him collateral kindred who were residents and citizens of the United States. It was insisted that the descent to aliens must be confined to those who were residents, as none but residents can make the prescribed deposition, but the Court decided that the limitation applied to the right of the State only. The conclusion was that "upon the death of the alien the daughter took one-third of the real estate by descent, and that the two sons took each one-third in like manner, the title to the latter being defeasible by the State, unless before the consummation of the proceedings instituted for that purpose, the sons filed the deposition."

The report of the case shows that the State had already released to the grantee of the children any

title acquired by escheat. (Goodrich *v.* Russell, New York Reports, vol. XLII (Hand, vol. III), p. 171.)

It is believed that the disabilities imposed on the transmission of real estate to the children born abroad of female citizens or subjects are peculiar to New York, unless, indeed, they are to be found in some other States of the Union. They cannot exist on the continent of Europe, as nearly everywhere, including Turkey, with the exception of provisions having for their object to secure reciprocity, the distinctions between citizens and foreigners have ceased with the abolition of the *droit d'aubaine.*

In England, long before the late radical change in her laws with respect to the tenure of real estate, rendered necessary, as her jurists supposed, by the contemplated naturalization convention with the United States, an act of Parliament had removed the disability in question.

By the 7th and 8th Victoria, c. 66 (1844), every person born of a British mother, though not made a British subject, is rendered capable of taking real or personal property by devise, purchase, inheritance or succession.

Rhode Island, in advance of her act of February 7, 1868,* which does away with all disabilities on the

* "All disabilities heretofore existing in aliens taking, holding, conveying, and transmitting title to real estate, situate within this State, are hereby removed, and aliens may sue for and recover possession of real estate in the same way and with the same effect as native born citizens of the United States." (Public Laws of Rhode Island, 1867–1869, p. 472.)

part of foreigners as to taking, holding, possessing, conveying and transmitting land, had incorporated into the Revised Statutes of 1857 the following provision, originally enacted in May, 1854 (Supplement, p. 994), and which I cite, though it only partially meets the particular grievance which I had proposed to bring especially to your Excellency's notice: "Real estate belonging or hereafter coming or descending to any woman born in the United States, or who has been otherwise a citizen thereof, shall, upon her death, notwithstanding her marriage with an alien and residence in a foreign country, descend to her lawful children of such marriage, if any, and their descendants in like manner and with like effect, as if such children or their descendants were native born or naturalized citizens of the United States." (Revised Statutes of Rhode Island, ed. 1857, p. 318.)

Several other States of the Union, to whose laws it will be proper hereafter to refer, have likewise assimilated the tenure by aliens of land to that of citizens of the United States.

I have thus far considered the law in regard to the transmission of property to aliens, as it was understood to be before the passage of the "act concerning the rights of American citizens in foreign States," of July 27, 1868, and the conclusion of several naturalization treaties between the United States and other powers, determining the nationality of their respective citizens and subjects.

No cases, as far as I am aware, have come before

the courts since these measures were adopted, nor were the treaties in question preceded in this country by any discussions as to the important changes which, by defining the *status* of aliens and citizens, they might introduce into the laws of property in the several States of the Union. But we have ample commentaries on the effects of the treaties in the diplomatic correspondence between the British Secretary of State and the minister of that government at Washington, in the report of the royal commissioners for inquiring into the laws of naturalization and allegiance, with its valuable appendix, in the publications which the subject elicited in England, including the essay of the Lord Chief Justice (Cockburn), devoted to an examination of "the law relating to subjects and aliens, with a view to future legislation," and especially in the act of Parliament (33 Vict., ch. xiv), entitled "An act to amend the law relating to the legal condition of aliens and British subjects," passed the 12th of May, 1870. This act embodies the result of all previous investigations as to the changes that would be effected by the convention, which was signed the next day (13th May, 1870), between Great Britain and the United States, not only in the political *status* of their respective subjects and citizens, but in the law of England relating to the acquisition and transmission of property by aliens.

It cannot escape observation that the British publicist, in adapting the existing laws to the new order of things, enjoys an advantage over the American in

having the whole field of legislation before him, while here it is the federal power which determines the national *status* by which the municipal law of property must be interpreted. An act of Parliament prepared under such circumstances to meet an exigency, equally arising in all countries, where the English common law prevails, commends itself to our careful consideration.

Not only does the power of naturalization exist in the United States to the exclusion of State authority, but the several departments of the federal government, from the very origin of our institutions, have maintained different doctrines as to the effect of a foreign naturalization on the prior allegiance of an American citizen.

The acts of Congress require, besides the oath of allegiance to the United States, a renunciation by the applicant for naturalization of all foreign allegiance, particularly to the power or State of which he was a subject or citizen.* In all our diplomatic discussions, as well in those that grew out of the impressment question, itself one of the principal causes of the war of 1812 with England, as in the recent negotiations, leading to the conclusion of the naturalization treaties, the United States have ever contended that naturalization by a foreign State, whether with or without the consent of the country of the individual naturalized, absolves him from all allegiance to the State of his origin. The only difference between the earlier and later cases has

* See Appendix A, I.

been as to the effect of a voluntary return of a naturalized citizen to his native country on his claim while there to the protection of the United States.

Contrary to the course of the Executive and of Congress, the courts of the United States, as well as those of the States generally, have in common with the English courts and with the ancient legislation of Parliament, considered naturalization, not as creating a new nationality substituted for that of origin, but as one superadded to it, leaving it to the party to reconcile the conflicting obligations of allegiance as best he might. Chancellor Kent, in his Commentaries, said: "From an historical view of the principal discussions in the federal courts, the better opinion would seem to be that a citizen cannot renounce his allegiance to the United States without the permission of government, to be declared by law, and that as there is no existing legislative regulation in the case, the rule of the English common law remains unaltered."

He added: "The naturalization laws of the United States are, however, inconsistent with this general doctrine, for they require the alien who is to be naturalized to abjure his former allegiance without requiring any evidence that his native sovereign has released him." (Kent's Commentaries, vol. II, p. 49.)

So late as 1863, in a case in the Court of Appeals of New York, the judge who pronounced the decision declared that he could not concur in the opinion expressed by the Court of Appeals of Kentucky, and by Secretary

Cass, that a citizen has a right to renounce his allegiance at pleasure. (Ludlam *v.* Ludlam, New York Reports, vol. XXVI (Smith, vol. XIII), p. 356.)

In order to meet the embarrassment arising from a conflict of allegiance, in cases of inheritance of property, the doctrine of double allegiance has been resorted to by the English and American courts. "By the law as established in Great Britain, as well as in this country," said an eminent New York judge, "there is of necessity, in many cases, a double allegiance. Thus, where the citizens of one country are naturalized in the other, and where issue are born, in the one, of parents who are citizens of the other country." (Sandford's Chancery Reports, vol. I, p. 583, Lynch *v.* Clarke.)

The same views are expressed in the case in the Court of Appeals of Ludlam *v.* Ludlam, already cited, where it is said, quoting an English authority: "As to the anomaly and inconsistency of Americans being citizens of the United States, while there, and being British subjects born when here, this is not a novelty, nor is it peculiar to Americans. It may happen to any British subject, and is allowable in our law, which recognizes the double character of being, as was before shown, *ad fidem utriusque regis.*" (Chalmer's Colonial Opinions, p. 702–3.)

As to the double allegiance of married women—"In every country, except where the English law prevails," said the Lord Chief Justice of England, in 1869, "the nationality of a woman on marriage merges in

that of the husband and she acquires his; whereas, by the law of England, though since the act of 7th and 8th Victoria, c. 66 (1844), an alien woman marrying a British subject becomes naturalized, an Englishwoman marrying an alien still remains a British subject. The law of America is the same. An American woman married to a foreigner retains her American nationality." (Cockburn's Nationality, p. 24.*)

It may be added that the act of Congress of 1855, like the English act of 7th and 8th Victoria, provides that a woman, who might be naturalized under existing laws, who is married to a citizen, shall be deemed a citizen. (United States Statutes at Large, vol. X, p. 604.†)

In 1840, Mr. Wheaton, minister at Berlin, declined to interfere in behalf of a Prussian naturalized in the United States, to be exempted from military service. He said, "Had you remained in the United States or visited any other country except Prussia, on your lawful business, you would have been protected by the American authorities, both at home and abroad, in the enjoyment of all your rights and privileges as a naturalized citizen of the United States, but having returned to the country of your birth, your native

* But see opinion of Attorney-General Stanbery, p. 10, *supra*.

† This act of Congress was preceded by a law of the State of New York, passed in 1845, which provided that "any woman, being an alien, who has heretofore, or who may hereafter, marry a citizen of the United States shall be entitled to dower in the real estate of her husband in this State." (General Statutes, vol. XI, p. 301.)

domicile and national character revert (so long as you remain in the Prussian dominions), and you are bound, in all respects, to obey the laws exactly as if you had never emigrated." The doctrine thus enunciated was, I have reason to know, the rule of all the instructions from the department of State, from the commencement of the government to the one of Secretary Cass, referred to in the decision of the Court of Appeals. (See Lawrence's Wheaton, ed. 1863, p. 924.)

Secretary Cass, in his instruction of July 8, 1859, to Mr. Wright, no longer left it optional with an individual to be a citizen of one or other of two countries according to circumstances, or to recognize a double allegiance.

"The moment a foreigner becomes naturalized," said he, "his allegiance to his native country is severed forever. He experiences a new political birth. A broad and impassable line separates him from his native country. He is no more responsible for anything he may say or do, or omit to say or do, after assuming his new character, than if he had been born in the United States. Should he return to his native country, he returns as an American citizen, and in no other character."

This instruction—the principle of which was maintained by Mr. Seward during the eight years that he presided over the Department of State—met the popular sentiment; and, in accordance with it, the doctrine of expatriation was emphatically proclaimed in the act

already referred to, which passed Congress in 1868. It declares that "the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty and the pursuit of happiness. Any declaration, instruction, opinion, order or decision of any officer of this government, which denies, restricts, impairs or questions the right of expatriation, is hereby declared inconsistent with the fundamental principles of this government." It further enacts "that all naturalized citizens of the United States, *while in foreign States*, shall be entitled to and shall receive from this government the same protection of persons and property that is accorded to native born citizens in like situations and circumstances. (United States Statutes at Large, 1867–8, p. 224.*)

A proposition was made during the discussion in the House of Representatives, but without effect, to insert a clause providing for the expatriation of Americans being domiciled abroad, on the ground that, "when we are asking foreign governments to make provision on our behalf for the expatriation of their citizens, it is quite indispensable that we should begin by providing for the expatriation of our own citizens." (Congressional Globe, 1867–8, vol. I, p. 866.) This act cannot, however, it is conceived, be construed otherwise than as a legislative repudiation of the judicial decisions on the subject of expatriation.

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* See Appendix A, I.

The principle of Mr. Cass's instruction and of the act of Congress is embodied in the convention concluded February 22, 1868, with the North-German Confederation, and which was followed by conventions of the same import with the other German States which had not then entered into the Union. Similar conventions were made with Mexico, July 10, 1868; with Belgium, November 16, 1868, and with Great Britain, 13th May, 1870. These treaties will be all found in the United States Consular Regulations, 1870, pp. 197–208.*

These treaties reciprocally stipulate that the citizens of the one country who are naturalized citizens of the other, and [with the exception of the one with England] have resided uninterruptedly within the country in which they are naturalized five years, *shall be held* by the country of which they were citizens to be citizens of the country in which they are naturalized, and *shall be treated as such.*†

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* A convention was also concluded with the Austro-Hungarian Monarchy, September 20, 1870. See, for the Treaties, Appendix A, II.

† There was an inaccuracy in this paragraph, as it appeared in the New York Evening Post, which was noticed by a London law journal. After citing the clause as to five years' continuous residence, it is said, "Although this statement is true of the convention between the United States and the North-German Confederation, it is not true of the convention between the United States and England, which contains nothing about five years' residence. A British subject, naturalized in the United States, is, by the convention, to become a citizen of the United States and to cease to be a British subject at the moment of naturalization and *vice versa*. It is true that by the naturalization acts of 1870, five years antecedent residence in the United Kingdom or five years in the service of the crown are conditions precedent to naturalization in the United Kingdom.

This provision is entirely inconsistent with the existence, at the same time, of a double allegiance, and is so regarded in the act of Parliament, which was deemed a necessary preliminary to the conclusion of the treaty with England. The consequence therefore is that every citizen of either of the contracting parties naturalized in the other becomes an alien in his own country.

Nor are the difficulties as to the tenure of property diminished by the article * of the treaties which recog-

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But this fact is not even alluded to in the convention. This inaccuracy, however, detracts very slightly from the merits of the letter, which in all other respects is worthy of the reputation of its author." (Solicitors' Journal and Reporter, vol. XV, p. 537.) The framers of the conventions, in requiring five years' residence, which is the general rule as to naturalization in the United States, do not appear to have adverted to the Statute of 1862, allowing those aliens, who served in the army or volunteer service, to be naturalized after one year's residence. Appendix A, I, 1. There is an attempt to explain the terms "*resided uninterruptedly*" in the protocol, ratified as part of the treaty with Bavaria. Appendix A, II, i, 2.

* The following is the fourth article of the North German Treaty: "If a German, naturalized in America, renews his residence in North Germany, without the intention to return to America, he shall be held to have renounced his naturalization in the United States." There is reciprocally the same provision as to an American naturalized in North Germany. It is added: "The intent not to return may be held to exist when the person naturalized in the one country resides more than two years in the other country."

In the treaty with England a formal readmission of a naturalized citizen to his original citizenship is contemplated, and the British act of 1870 makes provision therefor, but no law of Congress has been passed on the subject. A supplemental convention, of February 23, 1871, provides the manner in which any person, originally a citizen of the United States, naturalized previous to May 13, 1870, a British subject, may, before 10th August, 1872, renounce his naturalization. There is the same provision as to a British subject naturalized a citizen of the United States. But no

nizes the right of a naturalized citizen to renounce his new and resume his old allegiance. On the contrary, if a party may, at pleasure, change his naturalization, and be at one time a citizen entitled to take land by descent or devise, in a State where alien disabilities exist, and at another excluded as an alien from inheritance and again a citizen, it is quite evident that, unless the law is made to conform to the new order of things, by striking from it altogether alien disabilities, no care or caution can insure the validity of a title to real estate.

So far as regards civil rights, that may not be important in countries where the disqualification of alienage as to real estate does not exist, or which, like Belgium, and other States with which we have treaties, have unqualifiedly abolished the *droit d'aubaine*, with all disabilities connected with the holding and transmission of real property, but as regards England (and the remark would seem equally to apply to those States of the Union which retain the English common law) essential modifications of the law were required, in order to avert results arising from the distinct political *status* created by treaty of members of the same family, who as aliens would be prevented from inheriting from one another, even a son from a father.

Lord Stanley, in a dispatch to Mr. Thornton, at Washington, dated March 14, 1868, says: "On exam-

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reference is made to cases of naturalization subsequent to May 13, 1870, though the declaration annexed might be made by any one who had been naturalized at any time before making it.

ining the provisions of the treaty between the United States and the North German Confederation, and on consulting the law officers of the Crown as to the possibility of adopting them, her Majesty's government regret to find that it is impossible for them to do so." He then mentions numerous legal difficulties which he supposes had escaped Mr. Seward's notice.

In his note of the 21st of March, while disclaiming all desire to maintain the doctrine of indefeasible allegiance, and expressing a wish to adopt the principle of expatriation, Lord Stanley says that the obstacles to immediate action are of a legal and not political character."

"It might be disposed of with comparative ease if no party but the one naturalized were to be affected by the renunciation or remission of actual allegiance. But other and much more complicated matters arise, where questions of descent, succession, title to property, and the general bearing of municipal laws adapted to the existing state of things, have to be considered, and much difficulty might arise unless such matters were duly weighed and discussed, and definite principles, by which all such difficulties should be obviated, were adopted between the countries concerned, and were sanctioned by their respective legislatures." He adds: "Considering the close resemblance between the law and procedure of this country and those of the United States, the same process would doubtless have to be gone through there, and in both it would probably be found

that a considerable revision of the law would be required to enable a naturalization treaty to work smoothly."

Mr. Seward had promised Mr. Thornton a report drawn up by a lawyer on the bearing of the stipulations contained in the treaty with Germany on the common and statute laws of America. But, in a dispatch of the 13th of April, he informs Lord Stanley that upon further reflection Mr. Seward had confessed to him his inability to comply with Mr. Thornton's wishes on the subject. (Parliamentary Papers North America, No. 1, 1869, pp. 2, 3, 5.)

As the British government were not willing to act without a full knowledge of the consequences, a royal commission was instituted 21st May, 1868, composed of some of the most eminent statesmen and lawyers of England, to inquire into the legal condition of natural born subjects residing in foreign countries, and to report how, having regard to the laws and practice of other states, it may be expedient to alter and amend the laws relating to such natural born subjects, their wives, children, descendants, or relatives; and also to inquire into legal condition of aliens residing within the realm, and to report how far, having regard to the laws and practice of this country, of foreign States or otherwise, it may be expedient to alter or amend the laws relating to such persons, or persons claiming rights or privileges through or under them. (Report of the Royal Com-

missioners for inquiring into the Laws of Naturalization and Allegiance, p. 111.*)

The papers accompanying the report of the commissioners, which was dated February 20, 1869, furnish the materials for an examination of the existing laws of the States of Europe and America, not only as regards naturalization as a political institution, but in reference to the civil rights and disabilities of aliens. Much of these matters I have had occasion to verify from original documents abroad and at home, for my work, now publishing at Leipzig. So far as regards the States of the Union, it would appear that besides Rhode Island, Maine, Massachusetts, New Jersey, Ohio, Michigan, Illinois, Minnesota, Nebraska, Wisconsin, Kansas, Oregon, Florida, and Georgia have abrogated the common law restrictions as respects the acquisition, possession, and transmission of real estate; and they do not exist in the territory of Colorado and the District of Columbia. To this list may be added Texas, as aliens may there take and hold real estate by devise or descent, from an alien or citizen, in the same manner in which a citizen of the United

* The members of the Commission were the Earl of Clarendon, Right Honorable Edward Cardwell, Sir Robert J. Phillimore (Judge of the Court of Admiralty), Sir George Bramwell (one of the Barons of the Exchequer), Sir John Karslake (Attorney-General), Sir Travers Twiss (Advocate-General), Sir Roundel Palmer, William Edward Forster, W. Vernon Harcourt, and Professor (now the Right Honourable) Mountague Bernard. The last named was one of the High Commissioners who concluded the Treaty at Washington of 1871. The secretary named in the Commission, and by whom the Report, as well as the statute to carry it into effect, was drawn, was Mr. Abbott, now Lord Tenterden, who was also attached to the High Commission, being the secretary on the part of Great Britain.

States may take and hold by devise or descent in the country of such alien. In Tennessee, this condition is also imposed, though the right of the alien to hold land coming to him, by devise or descent, is limited to seven years. The Constitution of Kansas declares that no distinction shall ever prevail in the law between foreigners and citizens in this respect. The same constitutional provision exists in Wisconsin, confined, however, to resident foreigners, but it has been made general by law. The Pennsylvania Act of May 1, 1861, virtually concedes the right of purchasing, holding, and transmitting real estate by aliens, though the value and quality of the lands are limited. In Louisiana the common law does not prevail, and foreigners are subjected to no disabilities with respect to real estate. In the other States of the Union a distinction ordinarily exists between citizens and aliens, and the right of the latter to take, hold, and transmit real estate is, in general, restricted, either to residents of the State or of the United States. In several of them, among which are Indiana and California, the estate descends to those who would be heirs, were it not for their alienage, defeasible, in case they do not become citizens, or declare their intention to become so, or at least become residents of the State or the United States, within a prescribed period; and in some of these cases the lands are sold and the proceeds retained in the treasury, for a greater or less time, to await the claims of heirs. (See Synopsis of State Laws Appendix A, III.)

Pending the investigation of the Commissioners a protocol was signed, 9th of October, 1868, which pledges the British Government to introduce measures into Parliament as speedily as may be possible, having regard to the variety of public and private interests which may be affected by a change in the laws of naturalization and allegiance under the consideration of the Royal Commission. The protocol says, incorrectly, as we contend: "The same provision not being necessary by the Constitution and laws of the United States, this article is not made reciprocal." (Parliamentary Paper, sup ut., p. 8.*)

The act of Parliament embodying the conclusions of the Commissioners, cited as the "Naturalization Act, 1870," was passed on the 12th of May. It commences by a virtual repeal of all those disabilities of aliens which had heretofore characterized the English law. Real and personal property of every description may be taken, acquired, held and disposed of by an alien in the same manner in all respects as by a natural born subject; and a title to real and personal property of every description may be devised through, from, or in succession to an alien in the same manner in all respects as through, from, or in succession to a natural born British subject.

A subsequent section, under the title of Expatriation, based on a renunciation of the long cherished doctrine of perpetual allegiance, recognizes the foreign

* See Appendix A, II, iv, (1).

status of British subjects who have renounced their allegiance.

It provides that any British subject who, when in a foreign State, and not under any disability, voluntarily becomes naturalized in such foreign State, shall be deemed to have *ceased to be a British subject and be regarded as an alien.*

This provision is of course wholly inconsistent with the doctrine on which so many American, as well as English decisions respecting property, have turned, of a double allegiance.

The conflict of nationality which had existed in the case of married women, naturalized by marriage, according to the laws of the country of their husband, while the law of England still regarded them as British subjects, is now settled by the clause that "a married woman shall be deemed to be a subject of the State of which her husband is, for the time being, a subject."

I have already suggested as an additional motive for a modification of the laws of descent, that the effect of the naturalization treaties might be to subject an American woman, naturalized by the laws of her husband's country, to the disabilities as to inheritance confessedly imposed by the law of New York on her children.

There are, also, in the act of 1870, provisions to prevent the question of double allegiance arising in the case of the children of native or naturalized British subjects born abroad, heretofore a fruitful source of

difficulty with the States of South America, as well as for the naturalization of aliens and the readmission to the rights of British nationality of British subjects who had become "statute aliens." It may be proper to mention in this connection, as bearing on the actual conditions, under the New York laws, of the descendants of American women married to foreigners, that not only may a widow, being a natural born British subject, who has become an alien in consequence of her marriage, at any time during widowhood, obtain a certificate of readmission to British nationality, but the children of such widow, who during infancy may have been resident with her in the British dominions, shall, as in the case of a father, who has obtained a certificate of readmission, be deemed to have resumed their British nationality.*

But the enactments as to naturalization, whatever might be their bearing in countries where the title of property depends on citizenship, are now only important to Englishmen as affecting their political *status*, inasmuch as all difficulties arising from the members of a family belonging to different nationalities, in the inheritance and succession of property, are removed by the general abrogation of the disabilities of aliens.

No naturalization treaty has been made with France, but it may not be irrelevant here to mention that, by

* The British naturalization entire act will be found in the Appendix A, II, iv, (2).

the Consular Convention of 23d February, 1853, the government of the Emperor accorded to the citizens of the United States the same rights within the territory of France, in respect to real and personal property and to inheritance, as are enjoyed by her own citizens. There is indeed "a reservation of the ulterior right of establishing reciprocity, in regard to possession and inheritance," but the law for the total abrogation of the *droit d'aubaine* by the National Assembly, after having been modified as regards reciprocity by the Code Napoleon, was unqualifiedly restored by the law of 14th July, 1819; and such is now the sentiment of Europe on the subject that there is little probability of an exercise by France of the reserved right. On the faith of the treaty and of the French law millions have been invested by American citizens in real estate in Paris. The stipulation on our part is, that "as to the States of the Union, by whose existing laws aliens are not permitted to hold real estate, the President engages to recommend to them the passage of such laws as may be necessary for the purpose of conferring this right." (United States Statutes at Large, vol. X, p. 996.)

The naturalization treaties make no reference as to the effect which the political *status* that they create may have on the title to property within the States. Indeed, whether the treaty-making power of the general government is competent to enter into stipulation with foreign powers, affecting the transmission of real estate and other matters generally considered to be of State

cognizance, has been made a question in the Supreme Court of the United States.

Though that tribunal had previously recognized as the supreme law of the land the treaty of 1794 with England, by which, according to Attorney General Cushing,* "all impediment of alienage was absolutely leveled to the ground, despite of the States" (Fairfax's Lessee *v.* Hunter's Lessee, Cranch's Reports, vol. VII, p. 627), yet, in the case of Frederickson *v.* The State of Louisiana (Howard's Reports, vol. XXIII, p. 445), it abstained, even though the question before it

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* Though Attorney-General Cushing, in an elaborate opinion, in 1857, came to the conclusion that the Government of the United States has constitutional power to enter into treaty stipulations with foreign governments, for the purpose of restricting or abolishing the property disabilities of aliens or their heirs in the several States. (Opinions of Attorneys-General, vol. VIII, p. 445.) Attorney-General Wirt gave, in 1819, an opinion that it is not in the power of the general government to alter, either by law or by treaty, the laws of the particular States, in reference to the inheritence of land. (*Ibid.* vol. I, p. 275.)

It would seem that the only judicial decision in a State court, to which Mr. Cushing referred (The People *v.* Gerke), was virtually overruled by a case (Siamessan *v.* Bofer) in the next volume of California Reports.

The case of The People *v.* Gerke (California Reports, vol. V, p. 381), was an information filed by the Attorney-General, against the grantee of an alien, who claimed his title under the 14th article of the treaty of 1828 with Prussia; and the Court there held that treaties made by the United States removing the disabilities of aliens to inherit are valid and within the intent of the Constitution of the United States. But, in a subsequent case (Siamessan *v.* Bofer, *Ib.*, vol. VI, p. 250), it was decided that the treaty between the United States and the Hanseatic towns has not enlarged the rights of the natives of those towns, so that they can maintain ejectment, but that the treaty only gives the right of disposing of land, which they are prevented from inheriting by their character as aliens. The Chief Justice (Murray), who delivered the opinion of the Court, said; "I did not participate with the majority of the Court in the decision of People *v.* Gerke, and entertain great doubts of its correctness. The treaty-

referred merely to personal property, from expressing an opinion as to the competency of the Government of the United States to regulate, by treaty, testamentary dispositions or laws of inheritance within the States.

In affirming in a previous case, arising under the convention of 1853 with France, a judgment from Louisiana, with reference to a tax on the property of decedents not domiciled in the State or citizens of the United States, Taney, Chief Justice, adds: "It is proper to say that the obligation of the treaty and its operation in the State and after it is made depends on the laws of Louisiana. The treaty does not claim for the United States the right of controlling the succession of real or personal property in a State, and its operation is expressly limited to the States of the Union whose laws permit it, so long and to the same extent as those laws shall remain in force; and as there is no act of the Legislature of Louisiana repealing this law and accepting the conditions of the treaty, so as to secure to her citizens similar rights in France, this court might feel some difficulty in saying that it was repealed by this treaty, if the State Court had not so expounded its own law, and held that Louisiana was one of the States in which the proposed arrangements of the treaty

making power can only be coeval with the express grant of power to the federal government, and can never be extended by implication to the reserved powers on matters which belong to State Sovereignty or to the right, which appertains to each State, to govern her own domestic concerns and establish her own police regulations. But, he said, that it was not necessary to decide this point, as the treaty might be fulfilled, without an action of ejectment, sales of parties out of possession being allowed by the laws of California."

were to be carried into effect." (Prevost *v.* Greneaux Howard's Reports, vol. XIX, p. 7.)

Nor has the treaty-making power always been consistent with itself. To the treaty of 1794 with England I have alluded. The treaty of 1778 with France was made before the adoption of the Federal Constitution. That of 1800, which accorded the reciprocal right of disposing of goods movable and immovable, contained a clause providing for the case of the laws of either State, restraining foreigners from the exercise of the rights of property with respect to real estate. To the Consular Convention I have already sufficiently referred. The only treaties, since that of 1794 with England, in which the right of inheriting real estate without the obligation of disposing of it is contained, are those of December 12, 1846, with New Granada, and of 2d January, 1850, with San Salvador. (United States Statutes at Large, vol. IX, p. 886; vol. X, p. 893.)

Several of the treaties made by the United States for the abolition of the *droit d'aubaine*, are confined to personal property; but there is a large class of them, beginning with the treaty with Prussia, which, though renewed in 1828, is the same as the original treaty of 1783, which provide that when land within the territory of one of the parties would descend to a citizen or subject of the other, were he not disqualified by alienage, he shall either have a reasonable time or a definite number of years in which to dispose of it. (Lawrence's Wheaton, ed. 1863, p. 238.) This provision inserted,

instead of a concession of the absolute right of inheritance, it has been supposed, met any defect in the treaty-making power of the federal government, either as it stood, at the time of the Confederation, when it was first inserted, or under the existing Constitution. It is, however, quite evident that if the President and Senate have not power to regulate permanently by treaty the transmission of real estate where aliens are interested they cannot temporarily arrest the legal course of descent. This is not a case in which, according to the common law, the fee can be kept in abeyance, but it must pass at the death of the person in whom it was vested to the heir or devisee competent to take it. If there be no such heir or devisee, it will, without any inquest of office, vest in the State. Moreover, if it were possible for an estate to pass by a treaty temporarily to the alien heir, to be divested, either by a sale or a failure to make one, what authority is to determine when the time prescribed by the treaty for making such sale has expired, or what authority is there to enforce a sale? Is it the Federal or State government that is to interpose? In the case of a failure to comply with the terms of the existing treaties, does the estate go to more remote relatives, who are citizens, and in whom the title would have vested at the death of the party last seised, if there had been no treaty, or does it escheat to the State? In case of the estates rendered defeasable under State laws, the same authority which

creates them has the means for ensuring their termination by appropriate action.

Whatever may be the treaty-making power of the general government, it is only by State legislation that the legal difficulties, occasioned as well by the conflict of jurisdiction in the case of the treaties abolishing the *droit d'aubaine*, as by the changes in national *status* effected by the naturalization treaties, can be adjusted. Even in the case of matters wholly within federal cognizance, unless the treaty executes itself, however binding it may be on the national faith, the action of Congress is necessary to carry it into effect. The most earnest advocate of the treaty-making power of the federal government has never contended that Congress could legislate about the succession or descent of property in the States. Applying the same rule to matters belonging to the internal legislation of the States, if the President and Senate can make a treaty with foreign powers about them, it is difficult to perceive how State laws, providing the details for their operation, can be dispensed with. Assuredly no friend of State rights, no opponent of centralization would desire, that the absence of appropriate State legislation should invite further usurpation on the part of the federal government, and it is respectfully submitted that all excuse for interference can only be effectually avoided by the removal of alien disabilities by the States. For the manner of doing this, the recent English statute, the result of the investigation of the ablest jurists of that country, from which

we derive our system of laws, affords a safe precedent. Such a course would not only abolish the particular anomaly to which I have solicited your attention—the disabilities of American women married abroad—but would assimilate the laws of New York to the general legislation of the civilized world.

It is not necessary for me to remind your Excellency of the very different state of things, which now exists everywhere, compared with the condition of the world when the common law rule of descents came into existence, and the intercourse between nations was confined to purposes of trade. I will not consider how far the restriction on the natural course of descents, and the superior importance attached to real property, were connected with the feudal system—a system utterly at variance with institutions which have wholly abrogated the rule of primogeniture and the distinction between males and females in respect to inheritance; but I may refer to the fact that steam and electricity, by annihilating space, have brought the whole civilized world into intimate social relations, resulting, to a greater or less extent, in the intermarriage of persons of different nationalities.

It is a principle of private international law, to which in England and the United States no other conditions apply, that a marriage, if valid in the country where it is celebrated, is valid everywhere, and unless valid there, it is valid nowhere. The laws of the different countries of Europe differ materially, in their

numerous preliminary requirements, from the simple principle of the old common law of Christendom, as it prevailed before the Council of Trent, and which constitutes the rule in the States of the American Union. It being understood that I had directed my attention to the comparative legislation of marriage and cognate subjects; my advice, always gratuitously rendered, was frequently invoked, during my late residence abroad, when the one or other of the parties about to be married was an American, respecting the measures proper to be pursued to make the proceedings regular, and, as the law of France and of other continental States adopted, in the absence of a nuptial contract, the rule of the community of goods, it was frequently expedient to regulate, in advance, the pecuniary relations of the parties, and in these cases, the law of the State to which the American might belong became an essential matter in the adjustment of the contract.*

It was often with no little astonishment that a father, who had invested all his property in real estate in New York, about to marry his daughter to an alien, learned what foreign lawyers could not comprehend,

* An exposition of the law of the different countries of Europe and America, as to what is required to constitute a valid marriage, will be found in a treatise originally published in the "*Revue de Droit International,*" by the writer of this letter, entitled "*Etude de Législation comparée et de Droit international sur le Mariage,*" Gand, 1870. The *London Law Magazine*, vol. 29, pp. 90–114, March, 1870, contains, under the title of "The marriage laws of various countries, as affecting the property of married women," a speech, by the Author, at the Congress of the Social Science Association, held at Bristol, England, October, 1869. It is reprinted as Appendix B.

that the land, in her own country, which he had set apart as her patrimony, even if she could legally hold it herself, could not pass to her children, whatever might be the provisions of the father's will; but would, at her death, go to collateral relatives, and that, in order to ensure anything to his grandchildren, it must be converted, possibly at a great sacrifice, into money, and at all events exposed to all the contingencies arising from investments depending on the judgment and good faith of trustees, whose interests would not necessarily be identical with those of the *cestui que* trust.

Believing that a fair representation of the state of the existing law could scarcely fail to induce a modification of it; moreover, actuated by a common interest with that of your constituents, to whom I have referred, I promised to do whatever depended on me to place our daughters married abroad on an equality before the law with their brothers and sisters, wherever they may reside. This must be my apology, independently of showing the necessity of conforming the general law of real estate to the late conventional arrangements, for the extent of this intrusion.

I am, dear Sir, your Excellency's obedient servant,

W. B. LAWRENCE.

PROPOSED ACTS,

(ACCOMPANYING LETTER TO GOVERNOR HOFFMAN).

I.

AN act to authorize aliens to take, hold and dispose of real estate.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Sec. 1. Real and personal property of every description may be taken, acquired, held, and disposed of by an alien in the same manner in all respects as by a natural born or naturalized citizen of the United States; and a title to real and personal property of every description may be derived through, from, or in succession to an alien, in the same manner in all respects as through, from, or in succession to a natural born or naturalized citizen of the United States.

This section shall not affect any estate or interest in real or personal property to which any person has or may become entitled, either mediately or immediately, in possession or expectancy, in pursuance of any disposition made before the passing of this act, or in pur-

suance of any devolution by law on the death of any person dying before the passing of this act.

II.

An act to authorize the descent of real estate to female citizens of the United States, and their descendants, notwithstanding their marriage with aliens.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Sec. 1. Real estate in this State now belonging to or hereafter coming, or descending to any woman born in the United States, or who has been otherwise a citizen thereof, shall upon her death, notwithstanding her marriage with an alien, and residence in a foreign country, descend to her lawful children of such marriage, if any, and their descendants, in like manner and with like effects, as if such children or their descendants were native born or naturalized citizens of the United States. Nor shall the title to any real estate which shall descend, be devised or otherwise conveyed to such woman, or to her lawful children, or to their descendants, be impaired or affected by reason of her marriage with an alien, or the alienage of such children, or their descendants.

CONCLUDING REMARKS.

The preceding letter was not received by Governor Hoffman till his annual message had been completed,

as will appear by his Excellency's acknowledgment of it.

"ALBANY, DEC. 30, 1870.

"My Dear Sir:

"I have your letter of 26th instant. It reached me only this morning; too late to examine it with reference to my message, which is complete and in the printer's hands. I will, as soon as possible, give it the examination which is due to it. Very respectfully,

"JOHN T. HOFFMAN.

"HON. W. B. LAWRENCE."

The letter was subsequently, at the request of the writer, sent to the Judiciary Committee of the Senate, and, in order to enable him to meet any objections, which might be suggested to the propositions which it contained, an opportunity was requested to submit such further explanations as might be required to the Judiciary Committees of the two houses. He was, however, assured by their respective chairmen (Mr. Murphy and Mr. Fields) that this was unnecessary, as the members of both committees were unanimous in favor of the abrogation of all alien disabilities, and that the action of the British Parliament would silence all opposition in the legislature.

Nor could the act have been introduced under better auspices than those of the chairman of the Senate's Committee, whose attainments as a jurist, and experience in the public service, both at home and abroad, justly gave to his recommendations the highest sanction. The bill, however, which was reported to

the Senate by the Judiciary Committee in February, 1871, failed to pass that body, and the subject was never considered in the Assembly.

We have no means of knowing what occurred in the Senate on the occasion of the rejection of the bill, except from the following sketch of the debate, which, not to do any injustice to the opponents of the measure, we give entire:

"Mr. Hardenberg renewed the motion to strike out the first section. It proposes a most radical change in the ancient laws of the State in regard to our soil. It is said that England, a monarchical government, has set us this example of liberality; but he understood that this example extended only to the Kingdom of Great Britain, therefore the 'reciprocity' spoken of did not strike him as exactly fair. It might have gone at least as far as the little Emerald Isle, but it does not, while it is asked of us to extend it all over our territory. It is claimed by the advocates of the measure that the foreigner who invests in real estate in this country, even though he shall not live among us, will be liable to taxation, and thus will contribute to the support of government. This is true, but are there no higher duties for the citizen to perform than the duty of paying taxes? Will not the foreigner, under this bill, escape jury duty and military duty? In case of war, shall we call upon him to aid and defend the land that he has acquired among us? No, those duties, partly in defense of his property, he escapes, and they must be performed by our own citizens. We could not find any justification for giving such an advantage to a foreigner over the citizen."

Mr. Murphy said "the Senator from the 14th (Mr. Hardenberg) has criticized the English law upon the ground that it did not apply to Ireland. That was a mistake; the law applied to the United Kingdom, which included Ireland."

Mr. Hardenberg said "that Ireland was not a part of the United Kingdom."—*Albany Argus*, April 12, 1870.

We do not deem it necessary to inquire how far the action of the Senate was influenced by the statement of

the member named in the debate, who objected to the British act, because it only extended to "the United Kingdom," of which he insisted, even after being corrected by the chairman of the Judiciary Committee, Ireland constituted no part. The numerous Irish acts, repealed by the naturalization act, are inserted in the schedule to it, and will, we trust, satisfy the Senator, that the act does extend to the "Emerald Isle."

Notwithstanding the abolition in the State of New York, almost coeval with our independence, "of all feudal tenures of every description, with all their incidents," and the abrogation by the Constitution of 1821, of all distinction in the elective franchise between freeholders and others, the objections are based wholly on the principle of the feudal or territorial system, which regards land as the only property, and the sole source of political power.

The whole of the theory for which the Senator contends, connecting jury duty and military duty with the ownership of land, has been utterly repudiated by the practice of the State of New York. Where lands escheat to the State, the invariable usage is to release the State's right to those who would inherit them, if the disabilities of aliens did not exist. We have referred to numerous acts, some of a general and some of a special character, where aliens have been allowed to transmit as well as to hold real estate. Not even in the cases, where the initiatory acts of naturalization are required, is the privileged alien ever asked to perform

jury duty or military duty—the former certainly would not be permitted to him.*

It would seem from the debate, that neither the legislation of Congress respecting expatriation, nor the naturalization treaties which demanded, in the view of all English jurists and publicists, important modifications in the existing legislation, wherever the English common law prevailed, was alluded to, much less was anything said as to the disabilities of the issue of American women married abroad, if not, since the naturalization treaties, of the women themselves, resulting from the laws of New York, which had been rendered more severe by the provisions of the Revised Statutes. It was, therefore, deemed advisable, even at that late period of the session, to attempt to obtain such a modification of these laws as would place an American female citizen married abroad and her descendants, in at least as favorable a position as a male citizen who had made a foreign marriage, and his descendants, which was, indeed, the primary motive for addressing Governor Hoffman, and a project of a law to that effect, as well as one for the general removal of alien disabilities, accompanied the letter to him. In the hope of drawing public attention to the subject, that letter was inserted in one of the principal journals of the city of

* "Every alien who shall hold real estate, in virtue of any of the foregoing provisions shall be subject to duties, assessments, taxes and burthens, as if he were a citizen of this State, but shall be incapable of voting at any election, of being elected or appointed to any office, or of *serving on any jury*. (New York Statutes at Large, vol. I, p. 669.)

New York. (See New York Evening Post, April 11, 1871.) The many communications which it has elicited from jurists, at home and abroad, and the surprise expressed by those who, owing to foreign intermarriages of members of their families, were interested in the disposition to which their property is exposed at their death, have induced the republication of the paper in its present form, with the *pieces justificatives* annexed.

The writer trusts that it may not be deemed indelicate on his part to indulge in the expectation that the approbation which has been accorded to his labors in another department of jurisprudence by the highest tribunals of England and America, may induce an inquiry, on the part of those who control the councils of the State, as to the correctness of the preceding views;* and if he should fail to convince them of the

* We refer in preference to the two editions of Lawrence's Wheaton, 1855 and 1863, as they have been submitted to a judicial ordeal. In the case of Lawrence *v.* Dana, Circuit Court of the United States for Massachusetts District, before Clifford and Lowell, J. J., Clifford, presiding Justice, in pronouncing the opinion of the court, said: "Evidence to show that the notes in the two annotated editions of Wheaton, as prepared by the complainant, involved great research and labor, beyond what appears in those two works, is unnecessary; and it is equally obvious and clear that the results of the research and labor there exhibited could not well have been accomplished by any person other than one of great learning, reading, and experience in such studies and investigations. Such a comprehensive collection of authorities, explanations, and well considered suggestions, is nowhere, in the judgment of the court, to be found in our language, unless it be in the text and notes of the author of the original work. Uncontradicted as these propositions are, it would be an act of supererogation to add anything further in their support."

No higher commendation could well be accorded to an author's labors than is to be deduced from the existence of such a suit. That a Doctor of Laws, of the first literary institution of the country, should conceive of no surer way to vindicate his claim to his diploma than to appropriate to

expediency of making the changes which the English lawyers have deemed necessary in order to conform

himself our annotations, by publishing an edition, in which, at the risk of exposure to the charges, both of piracy and perjury, his name is substituted to ours, is a compliment paid to our work, of which any publicist might have just reason to be proud. Not to omit any means of establishing a title to the purloined property, Mr. Dana was not content with merely ignoring us in the body of our book, but in his preface it is announced: "This edition contains nothing but the text of Mr. Wheaton, according to his last revision, his notes and the original matter contributed by the editor." Again: "The notes of Mr. Lawrence do not form any part of this edition. It is confined, as has been said, to the text and notes of the author, and the notes of the present editor." (Preface, pp. v–xi, Elements of International Law, by Henry Wheaton, LL D., &c., &c., 8th edition. Edited, with notes, by Richard Henry Dana, Jr., LL.D., Boston, 1866.)

Evading the issue tendered in the preface, the most eminent lawyers of Massachusetts were employed to interpose to our bill technical objections. It was especially maintained that Mr. Lawrence's generous course towards Mr. Wheaton's family, in giving them the profits of all previous editions as well as the *honoraries* from the French work in Leipzig, had divested him of all title to his own literary property. Foiled in this effort, Mr. Dana was compelled to admit, that so far from his edition being according to the last revision of Mr. Wheaton's text, he had never seen such revised edition, but had printed the book from the editions of Mr. Lawrence, which had been collated with the French one, published subsequent to the last American, in Mr. Wheaton's lifetime. From this edition many pages had been translated and transferred by Mr. Lawrence to his publication. As to the notes in the spurious edition, the accurate scrutiny of Judge Potter, of the Supreme Court of Rhode Island, who acted as expert, having shown that they were essentially taken, with greater or lesser changes of phraseology, from the genuine edition, Mr. Dana could no longer avoid conceding the falsity of the statement in the preface, in all its parts, but was driven to an attempt to palliate the piracy, by avowing that the researches of Mr. Lawrence had been so complete, as to leave no alternative to any future commentator of Wheaton, who was necessarily obliged either to abandon his attempt, or to avail himself of the annotations of his predecessor. Our editions being long out of print, we constantly read in the writers of the present day our annotations with references to Dana, and, to avoid the supposition that we have abandoned our property to piratical intrusion, we think it necessary to avail ourselves of every suitable occasion to assure the public that we are taking every means to render available the judgment of the court in our favor.

their municipal law to international obligations, they will, at least, recommend to the Legislature to go as far as the English act of 1844, and provide that every person born of an American mother (though the naturalization laws over which the State has no control, may not make him an American citizen), shall be "capable of taking real or personal property by devise, purchase, inheritance, or succession."

If from whatever cause alien disabilities in general cannot be removed or relief granted in behalf of the class specially referred to, he would ask that the ancient common law be restored by the repeal of the Revised Statutes in the cases indicated (1 R. S., p. 754, § 22; 2 R. S., p. 58, § 4), the practical operation of which has been to render still more objectionable the anomalies of the New York law. (See page 12, *supra.*)

Did the professed reforms which we have examined not exist, the devisees and natural heirs, in which category children and their descendants are included, instead of being divested by an arbitrary enactment, which no human power can modify, of their estates in favor of individuals who are neither the objects of the decedent's bounty nor bound to him by any near ties of consanguinity, they would be remitted, in the case of an escheat to the State, by special acts of the Legislature, to the enjoyment of an heritage, their right to which, in the words already quoted from the most recent

expositor of English law, "is to be traced to a higher source than mere institutions of civil society."

He trusts that the course of the last year's legislation on the proposed bill will not be an objection to its future consideration. It may not be proper, under ordinary circumstances, for a citizen of one State to question the wisdom of the parliamentary action in another State, but he may be permitted to suggest as an apology for soliciting attention to the subject at a future session, that when nearly two hundred laws presented to a Governor of distinguished intelligence and unimpeachable integrity for his approval, failed to receive the executive sanction, it may not be deemed extraordinary that a measure, which had no other support than its intrinsic merit, should not have passed through the forms of legislation.

APPENDIX A.

I.

THE UNITED STATES LAWS OF

NATURALIZATION & EXPATRIATION.

I.

NATURALIZATION.

By the act of April 14, 1802, and which is the law now applicable, in ordinary cases, a free white person may become a citizen by having declared on oath before a court of the United States, in any State or Territory, three years before his admission, that it was his *bona fide* intention to become a citizen, and renounce forever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, and by name the prince, &c., whereof such alien may at the time be a citizen or subject; and he shall declare at the time of his admission, on oath, before the court, that he absolutely renounces and abjures all allegiance, &c., to every foreign prince, &c., as aforesaid, which proceedings shall be recorded; the court must be satisfied that he has resided five years in the United States and one year within the State where the court is held; that he has behaved as a man of good moral character, and is attached to the principles of the Constitution of the United States. By this same act, minor children, whose parents had been naturalized citizens, and children of citizens that had been born out of the United States, were not to be deemed aliens. (United States Statutes at Large, vol. II, p. 153.)

By the Act of May 26, 1824, minors who shall have resided in the United States three years next before they are twenty-one years

of age, after a residence of five years, including the three years of minority, may, without having made the previous declaration, be admitted by taking the oath of alienation, &c., as in other cases. (*Ib.* vol. IV, p. 69.) And to meet a supposed defect in the Act of 1802, by the Act of February 10, 1855, persons heretofore born or hereafter to be born out of the United States, whose fathers were or shall be at the time of their birth, citizens of the United States, shall be deemed citizens, but the rights of citizenship shall not be deemed to descend to persons, whose fathers never resided in the United States, and a woman who might be naturalized under existing laws, who is married, or who shall be married to a citizen, shall be deemed a citizen. (*Ib.* vol. X, p. 604.) By an Act of July 17, 1862, any alien of the age of 21, who has enlisted or shall enlist in the regular or volunteer forces of the United States, and has been or shall be honorably discharged, may be admitted a citizen upon his petition, and shall not be required to prove more than one year's residence in the United States previous to his application. (United States Statutes at Large, vol. XII, p. 597.)

By an Act of July 14, 1879, the naturalization laws were extended to aliens of African nativity and to persons of African descent. (United States Statutes at Large, 1869–71, p. 256.)

II.

EXPATRIATION.

Act concerning the Rights of American Citizens in Foreign States, approved July 27, 1868.

WHEREAS the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness; and whereas in the recognition of this principle this government has freely received emigrants from all nations, and invested them with the rights of citizenship; and whereas it is claimed that such American citizens, with their descendants, are subjects of foreign states, owing allegiance to the governments thereof; and whereas it is necessary to the maintenance of public peace that this claim of foreign allegiance should be promptly and finally disavowed: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any declara-

tion, instruction, opinion, order, or decision of any officers of this government which denies, restricts, impairs, or questions the right of expatriation, is hereby declared inconsistent with the fundamental principles of this government.

Sec. 2. And be it further enacted, That all naturalized citizens of the United States, while in foreign states, shall be entitled to, and shall receive from this government, the same protection of persons and property that is accorded to native born citizens in like situations and circumstances.

Sec. 3. And be it further enacted, That whenever it shall be made known to the President that any citizen of the United States has been unjustly deprived of his liberty by or under the authority of any foreign government, it shall be the duty of the President forthwith to demand of that government the reasons for such imprisonment, and if it appears to be wrongful, and in violation of the rights of American citizenship, the President shall forthwith demand the release of such citizen, and if the release so demanded is unreasonably delayed or refused, it shall be the duty of the President to use such means, not amounting to acts of war, as he may think necessary and proper to obtain or effectuate such release, and all the facts and proceedings relative thereto shall as soon as practicable be communicated by the President to Congress. (United States Statutes at Large, 1867–8, p. 223.)

See for British Law of Naturalization and Expatriation, the Naturalization Act, 1870, § vi, p. 82, *infra*. For the naturalization laws of the different States of Europe and America, see Lawrence's Wheaton, edit. 1863, Appendix, p. 861, *et seq.*; Lawrence's Commentaire sur le Droit Internationale, &c., tome III, p. 110.

II.

NATURALIZATION TREATIES.

I.

TREATIES WITH THE GERMAN STATES.

(1.) CONVENTION WITH THE NORTH GERMAN CONFEDERATION,

CONCLUDED FEBRUARY 22D, 1868.

The President of the United States of America and his Majesty the King of Prussia, in the name of the North German Confederation, led by the wish to regulate the citizenship of those persons who emigrate from the North German Confederation to the United States of America, and from the United States of America to the territory of the North German Confederation, have resolved to treat on this subject, and have for that purpose appointed plenipotentiaries to conclude a convention; that is to say, *et cetera:*

ARTICLE I.

Citizens of the North German Confederation, who become naturalized citizens of the United States of America, and shall have resided uninterruptedly within the United States five years, shall be held by the North German Confederation to be American citizens, and shall be treated as such.

Reciprocally: Citizens of the United States of America who become naturalized citizens of the North German Confederation, and shall have resided uninterruptedly within North Germany five years, shall be held by the United States to be North German citizens, and shall be treated as such. The declaration of an intention to become a citizen of the one or the other countries, has not for either party the effect of naturalization.

This article shall apply as well to those already naturalized in either country as those hereafter naturalized.*

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* This last paragraph is not to be found in the treaty as promulgated by the government of the North German Confederation (Gesetze des Norddeutschen Bundes, 1869, p. 35), nor is it in the treaty as it is published in the United States

ARTICLE II.

A naturalized citizen of the one party on return to the territory of the other party remains liable to trial and punishment for an action punishable by the laws of his original country, and committed before his emigration; saving, always, the limitation established by the laws of his original country.

ARTICLE III.

The convention for the mutual delivery of criminals, fugitives from justice, in certain cases, concluded between the United States on the one part, and Prussia and other states of Germany on the other part, the sixteenth day of June, one thousand eight hundred and fifty-two, is hereby extended to all the States of the North German Confederation.

ARTICLE IV.

If a German, naturalized in America, renews his residence in North Germany without the intent to return to America, he shall be held to have renounced his naturalization in the United States. Reciprocally: If an American, naturalized in North Germany, renews his residence in the United States, without the intent to return to North Germany, he shall be held to have renounced his naturalization in North Germany. The intent not to return may be held to exist when the person naturalized in the one country resides more than two years in the other country.

ARTICLE V.

The present convention shall go into effect immediately on the exchange of ratifications, and shall continue in force for ten years. If neither party shall have given to the other six months' previous notice of its intention then to terminate the same, it shall further remain in force until the end of twelve months after either of the contracting parties shall have given notice to the other of such intention. (Treaties of the United States, 1868, p. 115.)

Consular Regulations (p. 206). We are not aware of any authority for inserting it. It will be seen that the first article is defective, inasmuch as the term "who become naturalized citizens," &c., is used in the English copy, while the words "*geworden sind*" in the German copy signify *have been*, and thus neither version includes all to whom it was obviously intended to apply. The mistake does not exist in the treaties with the South German States.

(2.) CONVENTION WITH BAVARIA,

CONCLUDED MAY 26, 1868.

Preamble according, in substance, with that of the preceding treaty.

ARTICLE I.

Citizens of Bavaria who have become, or shall become, naturalized citizens of the United States of America, and shall have resided uninterruptedly within the United States for five years, shall be held by Bavaria to be American citizens and shall be treated as such.

Reciprocally: Citizens of the United States of America who have become, or shall become, naturalized citizens of Bavaria, and shall have resided uninterruptedly within Bavaria five years, shall be held by the United States to be Bavarian citizens, and shall be treated as such.

ARTICLE II.

The same as the North German treaty, with the words, "or any other remission of liability to punishment," added.

ARTICLE III.

Extradition treaty of 12th September, 1853, to remain in force.

ARTICLES IV. AND V.

The same as the North German treaty.

PROTOCOL,*

DONE AT MUNICH, THE 26TH MAY, 1868.

The undersigned met to-day to sign the treaty agreed upon in conformity with their respective full powers, relating to the citizenship of

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* A protocol or declaration, signed by the Plenipotentiaries, whether at the time of the conclusion of the treaty, or of the exchange of the ratifications, has no effect in the United States on the interpretation of a treaty, unless it has been submitted to and approved by the Senate. But where one of the parties to a treaty, at the time of its ratification, annexes a written declaration explaining ambiguous language in the instrument, or adding a new and distinct stipulation, and the treaty is afterwards ratified by the other party with the declaration attached to it, and the ratifications duly exchanged, the declaration thus annexed is a part of the treaty, and as binding and obligatory as if it were inserted in the body of the instrument. (Lawrence's Wheaton, Ed. 1863, notes 153, 249, pp. 455, 879.) In the case of the Bavarian treaty, the protocol was promulgated by the President as a part of the convention.

those persons who emigrate from Bavaria to the United States of America, and from the United States of America to Bavaria, on which occasion the following observations, more exactly defining and explaining the contents of this treaty, were entered in the following protocol:

I.—*Relating to the First Article of the Treaty.*

1. Inasmuch as the copulative "and" is made use of, it follows, of course, that not the naturalization alone, but an additional five years' uninterrupted residence is required before a person can be regarded as coming within the treaty; but it is by no means requisite that the five years' residence should take place after the naturalization. It is hereby further understood that if a Bavarian has been discharged from his Bavarian indigenate, or on the other side, if an American has been discharged from his American citizenship, in the manner legally prescribed by the government of his original country, and then acquires naturalization in the other country in a rightful and perfectly valid manner, then an additional five years' residence shall no longer be required, but a person so naturalized shall, from the moment of his naturalization, be held and treated as a Bavarian, and reciprocally as an American citizen.

2. The words "resided uninterruptedly" are obviously to be understood, not of a continued bodily presence, but in the legal sense, and therefore a transient absence, a journey or the like, by no means interrupts the period of five years contemplated by the first article.

II.—*Relating to the Second Article of the Treaty.*

1. It is expressly agreed that a person who, under the first article, is to be held as an adopted citizen of the other state, on his return to his original country cannot be made punishable for the act of emigration itself, not even though at a later day he should have lost his adopted citizenship.

III.—*Relating to Article Four of the Treaty.*

1. It is agreed on both sides that the regulative powers granted to the two governments respectively, by their laws, for protection against resident aliens, whose residence endangers peace and order in the land, are not affected by the treaty. In particular, the regulation contained in the second clause of the tenth article of the Bavarian military law of the 30th of January, 1868, according to which Bavarians, emi-

grating from Bavaria before the fulfillment of their military duty, can not be admitted to a permanent residence in the land till they shall have become thirty-two years old, is not affected by the treaty. But yet it is established and agreed that by the expression "permanent residence" used in the said article, the above described emigrants are not forbidden to undertake a journey to Bavaria, for a less period of time and for definite purposes, and the royal Bavarian government moreover cheerfully declares itself ready, in all cases in which the emigration has plainly taken place in good faith, to allow a mild rule in practice to be adopted.

2. It is hereby agreed that when a Bavarian, naturalized in America, and reciprocally an American naturalized in Bavaria, takes up his abode once more in his original country, without the intention of return to the country of his adoption, he does by no means thereby recover his former citizenship; on the contrary, in so far as it relates to Bavaria, it depends on His Majesty, the King, whether he will, or will not in that event grant the Bavarian citizenship anew.

The article fourth shall accordingly have only this meaning, that the adopted country of the emigrant cannot prevent him from acquiring once more his former citizenship; but not that the state to which the emigrant originally belonged is bound to restore him at once to his original relation.

On the contrary, the citizen naturalized abroad must first apply to be received back into his original country in the manner prescribed by its laws and regulations, and must acquire citizenship anew, exactly like any other alien.

But yet it is left to his own free choice, whether he will adopt that course, or will preserve the citizenship of the country of his adoption.

The two plenipotentiaries give each other mutually the assurance that their respective governments, in ratifying this treaty, will also regard as approved, and will maintain the agreements and explanations contained in the present protocol, without any further formal ratification of the same.

(The name of George Bancroft, with his seal, is attached to the English version of the protocol, and that of Dr. Otto Fhr. Von Volderndorff, with his seal, to the German.)

(Treaties, 1868, p. 147.)

(3.) CONVENTION WITH BADEN,

CONCLUDED JULY 19, 1868.

Preamble Accords with the North German Treaty.

ARTICLE I.

Citizens of the Grand Duchy of Baden, who have resided uninterruptedly within the United States of America five years, and before, during, or after that time have become, or shall become, naturalized citizens of the United States, shall be held by Baden to be American citizens, and shall be treated as such. Reciprocally: citizens of the United States of America, who have resided uninterruptedly within the Grand Duchy of Baden five years, and before, during, or after that time have become, or shall become, naturalized citizens of the Grand Duchy of Baden, shall be held by the United States to be citizens of Baden, and shall be treated as such. The declaration of an intention to become a citizen of the one or the other country has not for either party the effect of naturalization.

ARTICLE II.

A naturalized citizen of the one party, on return to the territory of the other party, remains liable to trial and punishment for an action punishable by the laws of his original country, and committed before his emigration, saving always the limitation established by the laws of his original country, or any other remission of liability to punishment. In particular, a former Badener who, under the first article, is to be held as an American citizen, is liable to trial and punishment according to the laws of Baden for non-fulfillment of military duty—

1. If he has emigrated after he, on occasion of the draft from those owing military duty, has been enrolled as a recruit for service in the standing army.
2. If he has emigrated while he stood in service under the flag, or had a leave of absence only for a limited time.
3. If, having a leave of absence for an unlimited time, or belonging to the reserve or to the militia, he has emigrated after having received a call into service, or after a public proclamation requiring his appearance, or after war has broken out.

On the other hand, a former Badener, naturalized in the United States, who, by or after his emigration, has transgressed, or shall

transgress the legal provisions on military duty by any acts or omissions other than those above enumerated, in the clauses numbered one to three, can, on his return to his original country, neither be held subsequently to military service, nor remain liable to trial and punishment for the non-fulfillment of his military duty. Moreover, the attachment on the property of an emigrant for non-fulfillment of his military duty, except in the cases designated in the clauses numbered one to three, shall be removed so soon as he shall prove his naturalization in the United States according to the first article.

ARTICLE III.

Extradition treaty of 13th January, 1857, to remain in force.

ARTICLE IV.

The emigrant from the one state, who, according to the first article, is to be held as a citizen of the other state, shall not on his return to his original country be constrained to resume his former citizenship; yet, if he shall of his own accord re-acquire it, and renounce the citizenship obtained by naturalization, such a renunciation is allowed, and no fixed period of residence shall be required for the recognition of his recovery of citizenship in his original country.

ARTICLE V.

The same as the preceding treaties.

(United States Treaties, 1870, p. 329.)

(4.) CONVENTION WITH HESSE-DARMSTADT,

CONCLUDED AUGUST 1, 1868,

For the portion of the Grand Duchy not then included in the North German Confederation.

Preamble Accords with the North German and other Treaties.

ARTICLE I.

The same as the treaty with Bavaria.

ARTICLE II.

The same as the North German treaty.

ARTICLE III.

Extradition treaty of the 16th of June, 1852, to remain in force.

ARTICLES IV. AND V.

The same as the North German treaty.

(United States Treaties, 1870, p. 337.)

(5.) CONVENTION WITH WÜRTEMBERG,

CONCLUDED JULY 27, 1868.

The Preamble Accords with the Preceding Treaties.

ARTICLES I. AND II.

The same as the treaty with Bavaria.

ARTICLE III.

Extradition convention of 16th June, 1852, to remain in force.

ARTICLES IV. AND V.

The same as the North German and Bavarian treaties.

(United States Treaties, 1870, p. 333.)

II.

CONVENTION WITH MEXICO,

CONCLUDED JULY 10, 1868.

ARTICLE I.

Those citizens of the United States who have been made citizens of the Mexican republic by naturalization, and have resided without interruption in Mexican territory five years, shall be held by the United States as citizens of the Mexican republic, and shall be treated

as such. Reciprocally: citizens of the Mexican republic who have become citizens of the United States, and who have resided uninterruptedly in the territory of the United States for five years, shall be held by the republic of Mexico as citizens of the United States, and shall be treated as such. The declaration of an intention to become a citizen of the one or the other country has not for either party the effect of naturalization. This article shall apply as well to those already naturalized in either of the countries contracting, as to those hereafter naturalized.

ARTICLE II.

Naturalized citizens of either of the contracting parties, on return to the territory of the other, remain liable to trial and punishment for an action punishable by the laws of his original country, and committed before his emigration; saving, always, the limitations established by his original country.

ARTICLE III.

The convention for the surrender, in certain cases, of criminals, fugitives from justice, concluded between the United States of America of the one part, and the Mexican republic on the other part, on the eleventh day of December, one thousand eight hundred and sixty-one, shall remain in full force without any alteration.

ARTICLE IV.

If a citizen of the United States, naturalized in Mexico, renews his residence in the United States without the intent to return to Mexico, he shall be held to have renounced his naturalization in Mexico. Reciprocally: If a Mexican, naturalized in the United States, renews his residence in Mexico, without the intent to return to the United States, he shall be held to have renounced his naturalization in the United States.

The intent not to return may be held to exist when the person naturalized in the one country resides in the other country more than two years, but this presumption may be rebutted by evidence to the contrary.

ARTICLE V.

(The provision as to the duration of the treaty is the same as in the preceding conventions.)

(United States Treaties, 1870, p. 233.)

III.

CONVENTION WITH BELGIUM,

CONCLUDED NOVEMBER 16TH, 1868.

ARTICLE I.

Citizens of the United States, who may or shall have been naturalized in Belgium, will be considered by the United States as citizens of Belgium. Reciprocally: Belgians who may or who shall have been naturalized in the United States will be considered by Belgium as citizens of the United States.

ARTICLE II.

Citizens of either contracting party, in case of their return to their original country, can be prosecuted there for crimes or misdemeanors committed before naturalization, saving to them such limitations as are established by the laws of their original country.

ARTICLE III.

Naturalized citizens of either contracting party, who shall have resided five years in the country which has naturalized them, cannot be held to the obligation of military service in their original country, or to incidental obligation resulting therefrom, in the event of their return to it, except in cases of desertion from organized and embodied military or naval service, or those that may be assimilated thereto by the laws of that country.

ARTICLE IV.

Citizens of the United States, naturalized in Belgium, shall be considered by Belgium as citizens of the United States when they shall have recovered their character as citizens of the United States, according to the laws of the United States. Reciprocally: Belgians, naturalized in the United States, shall be considered as Belgians by the United States when they shall have recovered their character as Belgians, according to the laws of Belgium.

ARTICLE V.

The present convention shall enter into execution immediately after the exchange of ratifications, and shall remain in force for ten years. If, at the expiration of that period, neither of the contracting parties shall have given notice six months in advance of its intention to terminate the same, it shall continue in force until the end of

twelve months after one of the contracting parties shall have given notice to the other of such intention. (United States Treaties, 1870, p. 341.)

IV.

NATURALIZATION OF BRITISH SUBJECTS AND AMERICAN CITIZENS.

(1.) PROTOCOL,

SHOWING THE PRINCIPLES AGREED UPON BY THE BRITISH AND THE UNITED STATES GOVERNMENTS ON THE QUESTION OF NATURALIZATION.—SIGNED AT LONDON, OCT. 9, 1868.

The undersigned, Edward Henry Lord Stanley, of Bickerstaffe, Her Britannic Majesty's Principal Secretary of State for Foreign Affairs, and Reverdy Johnson, Esquire, Envoy Extraordinary and Minister Plenipotentiary from the United States of America, being respectively authorized and empowered to place on record the desire of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and of the President of the United States of America, to regulate the citizenship of British subjects who have emigrated, or who may emigrate, from the British dominions to the United States of America, and of citizens of the United States of America who have emigrated, or who may emigrate, to the British dominions, have agreed upon the following Protocol:

1. Such British subjects, as aforesaid, who have become, or shall become, and are naturalized, according to law, within the United States of America, as citizens thereof, shall, subject to the provisions of Articles II and IV, be held by Great Britain to be in all respects, and for all purposes, American citizens, and shall be treated as such by Great Britain.

Reciprocally: Such citizens, as aforesaid, of the United States who have become, or shall become, and are naturalized, according to law, within the British dominions as British subjects, shall, subject to the provisions of Articles II and IV, be held by the United States to be in all respects, and for all purposes, British subjects, and shall be treated as such by the United States.

II. Such British subjects as aforesaid, who have become and are naturalized as citizens within the United States, and such United States citizens as aforesaid, who have become and are naturalized

within the British dominions as British subjects, shall be at liberty to renounce their naturalization and to resume their respective nationalities; provided that such renunciation be publicly declared within two years after this protocol shall have been carried into effect, as provided by Article IV.

The manner in which this renunciation may be made and publicly declared shall be hereafter agreed upon by the respective governments.

III. If such British subject as aforesaid, naturalized in the United States, should renew his residence within the British dominions, the British government may, on his own application and on such conditions as that government may think fit to impose, re-admit him to the character and privileges of a British subject, and the United States shall not, in that case, claim him as a citizen of the United States on account of his former naturalization.

In the same manner, if such American citizen as aforesaid, naturalized within the British dominions, should renew his residence in the United States, the United States government may, on his own application and on such conditions as that government may think fit to impose, re-admit him to the character and privileges of an American citizen, and Great Britain shall not, in that case, claim him as a British subject on account of his former naturalization.

IV. As it will not be practicable for Great Britain to carry into operation the principles laid down in this protocol until provision has been made by the Imperial Parliament for such a revision of the existing laws as the adoption of those principles involves, it is agreed that this protocol shall not take effect until such legislation can be accomplished.

The British government will introduce measures into Parliament for this purpose as speedily as may be possible, having regard to the variety of public and private interests which may be affected by a change in the laws of naturalization and allegiance now under the consideration of the Royal Commission, whose report is expected shortly to be made.

The same provision not being necessary by the Constitution and laws of the United States, this article is not made reciprocal.

Done at London, the 9th of October, 1868.

(Signed) STANLEY,
REVERDY JOHNSON.

(Parliamentary Papers, North America, No. 1869, p. 8.)

(2.) BRITISH NATURALIZATION ACT, 1870.

33 *Victoria, Chapter XIV.*

AN ACT TO AMEND THE LAW RELATING TO THE LEGAL CONDITION OF ALIENS AND BRITISH SUBJECTS.

(12*th May*, 1870.)

Whereas it is expedient to amend the law relating to the legal condition of aliens and British subjects:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

I. This Act may be cited for all purposes as "The Naturalization Act, 1870."

Status of Aliens in the United Kingdom.

II. Real and personal property of every description may be taken, acquired, held and disposed of by an alien in the same manner in all respects as by a natural-born British subject; and a title to real and personal property of every description may be derived through, from, or in succession to an alien, in the same manner in all respects as through, from, or in succession to a natural-born British subject: *Provided,*—

(1.) That this section shall not confer any right on an alien to hold real property situate out of the United Kingdom, and shall not qualify an alien for any office or for any municipal, parliamentary, or other franchise;

(2.) That this section shall not entitle an alien to any right or privilege as a British subject, except such rights and privileges in respect of property as are hereby expressly given to him;

(3.) That this section shall not affect any estate or interest in real or personal property to which any person has or may become entitled, either mediately or immediately, in possession or expectancy, in pursuance of any disposition made before the passing of this Act, or in pursuance of any devolution by law on the death of any person dying before the passing of this act.

III. Where Her Majesty has entered into a convention with any foreign State to the effect that the subjects or citizens of that State who have been naturalized as British subjects may divest themselves of their status as such subjects, it shall be lawful for Her Majesty, by order in council, to declare that such convention has been entered into by Her Majesty; and from and after the date of such order in council, any person being originally a subject or citizen of the State referred to in such order, who has been naturalized as a British subject, may, within such limit of time as may be provided in the convention, make a declaration of alienage, and from and after the date of his so making such declaration such person shall be regarded as an alien, and as a subject of the State to which he originally belonged as aforesaid.

A declaration of alienage may be made as follows; that is to say, —If the declarant be in the United Kingdom in the presence of any justice of the peace, if elsewhere in Her Majesty's dominions in the presence of any judge of any court of civil or criminal jurisdiction, of any justice of the peace, or of any other officer for the time being authorized by law in the place in which the declarant is to administer an oath for any judicial or other legal purpose. If out of Her Majesty's dominions in the presence of any officer in the diplomatic or consular service of Her Majesty.

IV. Any person who by reason of his having been born within the dominions of Her Majesty is a natural born subject, but who also at the time of his birth became under the law of any foreign State a subject of such State, and is still such subject, may, if of full age and not under any disability, make a declaration of alienage in manner aforesaid, and from and after the making of such declaration of alienage such person shall cease to be a British subject. Any person who is born out of Her Majesty's dominions of a father being a British subject may, if of full age and not under any disability, make a declaration of alienage in manner aforesaid, and from and after the making of such declaration shall cease to be a British subject.

V. From and after the passing of this Act, an alien shall not be entitled to be tried by a jury *de medietate linguæ*, but shall be triable in the same manner as if he were a natural born subject.

Expatriation.

VI. Any British subject who has at any time before, or may at any time after the passing of this Act, when in any foreign State and

not under any disability voluntarily become naturalized in such State, shall from and after the time of his so having become naturalized in such foreign State, be deemed to have ceased to be a British subject, and be regarded as an alien; *Provided*,—

(1.) That where any British subject has before the passing of this Act voluntarily become naturalized in a foreign State, and yet is desirous of remaining a British subject, he may, at any time within two years after the passing of this Act, make a declaration that he is desirous of remaining a British subject, and upon such declaration hereinafter referred to as a declaration of British nationality being made, and upon his taking the oath of allegiance, the declarant shall be deemed to be and to have been continually a British subject; with this qualification, that he shall not, when within the limits of the foreign State in which he has been naturalized, he deemed to be a British subject, unless he has ceased to be a subject of that State in pursuance of the laws thereof, or in pursuance of a treaty to that effect;

(2.) A declaration of British nationality may be made, and the oath of allegiance be taken as follows; that is to say,— If the declarant be in the United Kingdom in the presence of a justice of the peace; if elsewhere in Her Majesty's dominions in the presence of any judge of any court of civil or criminal jurisdiction, of any justice of the peace, or of any other officer for the time being authorized by law in the place in which the declarant is to administer an oath for any judicial or other legal purpose. If out of Her Majesty's dominions in the presence of any officer in the diplomatic or consular service of Her Majesty.

Naturalization and Resumption of British Nationality.

VII. An alien who, within such limited time before making the application hereinafter mentioned as may be allowed by one of Her Majesty's Principal Secretaries of State, either by general order or on any special occasion, has resided in the United Kingdom for a term of not less than five years, or has been in the service of the Crown for a term of not less than five years, and intends, when naturalized, either to reside in the United Kingdom, or to serve under the Crown, may apply to one of her Majesty's Principal Secretaries of State for a certificate of naturalization.

The applicant shall adduce in support of his application such evidence of his residence or service, and intention to reside or serve, as such Secretary of State may require. The said Secretary of State, if satisfied with the evidence adduced, shall take the case of the applicant into consideration, and may, with or without assigning any reason, give or withhold a certificate as he thinks most conducive to the public good, and no appeal shall lie from his decision, but such certificate shall not take effect until the applicant has taken the oath of allegiance.

An alien to whom a certificate of naturalization is granted shall in the United Kingdom be entitled to all political and other rights, powers, and privileges, and be subject to all obligations, to which a natural born British subject is entitled or subject in the United Kingdom, with this qualification, that he shall not, when within the limits of the foreign State of which he was a subject previously to obtaining his certificate of naturalization, be deemed to be a British subject unless he has ceased to be a subject of that State in pursuance of the laws thereof, or in pursuance of a treaty to that effect.

The said Secretary of State may in manner aforesaid grant a special certificate of naturalization to any person with respect to whose nationality as a British subject a doubt exists, and he may specify in such certificate that the grant thereof is made for the purpose of quieting doubts as to the right of such person to be a British subject, and the grant of such special certificate shall not be deemed to be any admission that the person to whom it was granted was not previously a British subject.

An alien who has been naturalized previously to the passing of this Act may apply to the Secretary of State for a certificate of naturalization under this Act, and it shall be lawful for the said Secretary of State to grant such certificate to such naturalized alien upon the same terms and subject to the same conditions in and upon which such certificate might have been granted if such alien had not been previously naturalized in the United Kingdom.

VIII. A natural born British subject who has become an alien in pursuance of this Act, and is in this Act referred to as a statutory alien, may, on performing the same conditions and adducing the same evidence as is required in the case of an alien applying for a certificate of nationality, apply to one of Her Majesty's Principal Secretaries of State for a certificate hereinafter referred to as a certificate of re-admission to British nationality, re-admitting him to the status

of a British subject. The said Secretary of State shall have the same discretion as to the giving or withholding of the certificate as in the case of a certificate of naturalization, and an oath of allegiance shall in like manner be required previously to the issuing of the certificate.

A statutory alien to whom a certificate of re-admission to British nationality has been granted shall, from the date of the certificate of re-admission, but not in respect of any previous transaction, resume his position as a British subject; with this qualification, that within the limits of the foreign State of which he became a subject he shall not be deemed to be a British subject unless he has ceased to be a subject of that foreign State according to the laws thereof, or in pursuance of a treaty to that effect.

The jurisdiction by this Act conferred on the Secretary of State in the United Kingdom in respect of the grant of a certificate of re-admission to British nationality, in the case of any statutory alien being in any British possession, may be exercised by the governor of such possession; and residence in such possession shall, in the case of such person, be deemed equivalent to residence in the United Kingdom.

IX. The oath in this Act referred to as the oath of allegiance shall be in the form following; that is to say,

"I do swear that I will be faithful and "bear true allegiance to Her Majesty Queen Victoria, her heirs and "successors, according to law. So help me GOD."

National Status of Married Women and Infant Children.

X. The following enactments shall be made with respect to the national status of women and children:

(1.) A married woman shall be deemed to be a subject of the State of which her husband is for the time being a subject;

(2.) A widow being a natural born British subject, who has become an alien by or in consequence of her marriage, shall be deemed to be a statutory alien, and may as such at any time during widowhood obtain a certificate of re-admission to British nationality in manner provided by this Act;

(3.) Where the father being a British subject, or the mother being a British subject and a widow, becomes an alien in pursuance of this Act, every child of such father or mother who during infancy has become resident in the country where the father or mother is naturalized, and has, according to the laws of such country, become naturalized therein, shall be deemed to be a subject of the State of which the father or mother has become a subject, and not a British subject;

(4.) Where the father, or the mother being a widow, has obtained a certificate of re-admission to British nationality, every child of such father or mother who during infancy has become resident in the British dominions with such father or mother, shall be deemed to have resumed the position of a British subject to all intents;

(5.) Where the father, or the mother being a widow, has obtained a certificate of naturalization in the United Kingdom, every child of such father or mother who during infancy has become resident with such father or mother in any part of the United Kingdom, shall be deemed to be a naturalized British subject.

Supplemental Provisions.

XI. One of Her Majesty's Principal Secretaries of State may by regulation provide for the following matters:—

(1.) The form and registration of declarations of British nationality;

(2.) The form and registration of certificates of naturalization in the United Kingdom;

(3.) The form and registration of certificates of re-admission to British nationality;

(4.) The form and registration of declarations of alienage;

(5.) The registration by officers in the diplomatic or consular service of Her Majesty of the births and deaths of British subjects who may be born or die out of Her Majesty's dominions, and of the marriages of persons married at any of Her Majesty's embassies or legations;

(6.) The transmission to the United Kingdom for the purpose of registration or safe keeping, or of being produced as evidence of any declarations or certificates made in pursuance of this Act out of the United Kingdom, or of any copies of such declarations or certificates, also of copies of entries contained in any register kept out of the United Kingdom in pursuance of or for the purpose of carrying into effect the provisions of this Act;

(7.) With the consent of the Treasury the imposition and application of fees in respect of any registration authorized to be made by this Act, and in respect of the making any declaration or the grant of any certificate authorized to be made or granted by this Act.

The said Secretary of State, by a further regulation, may repeal, alter, or add to any regulation previously made by him in pursuance of this section.

Any regulation made by the said Secretary of State in pursuance of this section shall be deemed to be within the powers conferred by this Act, and shall be of the same force as if it had been enacted in this Act, but shall not so far as respects the imposition of fees be in force in any British possession, and shall not, so far as respects any other matter, be in force in any British possession in which any Act or ordinance to the contrary of or inconsistent with any such direction may for the time being be in force.

XII. The following regulations shall be made with respect to evidence under this Act:—

(1.) Any declaration authorized to be made under this Act may be proved in any legal proceeding by the production of the original declaration, or of any copy thereof certified to be a true copy by one of Her Majesty's Principal Secretaries of State, or by any person authorized by regulations of one of Her Majesty's Principal Secretaries of State to give certified copies of such declaration, and the production of such declaration or copy shall be evidence of the person therein named as declarant having made the same at the date in the said declaration mentioned;

(2.) A certificate of naturalization may be proved in any legal proceeding by the production of the original certificate, or of any copy thereof certified to be a true copy by one of Her Majesty's Principal Secretaries of State, or by any person authorized by regulations of one of Her Majesty's Principal Secretaries of State to give certified copies of such certificate;

(3.) A certificate of re-admission to British nationality may be proved in any legal proceeding by the production of the original certificate, or of any copy thereof certified to be a true copy by one of Her Majesty's Principal Secretaries of State, or by any person authorized by regulations of one of Her Majesty's Principal Secretaries of State to give certified copies of such certificate;

(4.) Entries in any register authorized to be made in pursuance of this Act shall be proved by such copies and certified in such manner as may be directed by one of Her Majesty's Principal Secretaries of State, and the copies of such entries shall be evidence of any matters by this Act or by any regulation of the said Secretary of State authorized to be inserted in the register;

(5.) The Documentary Evidence Act, 1868, shall apply to any regulation made by a Secretary of State, in pursuance of or for the purpose of carrying into effect any of the provisions of this Act.

Miscellaneous.

XIII. Nothing in this Act contained shall affect the grant of letters of denization by Her Majesty.

XIV. Nothing in this Act contained shall qualify an alien to be the owner of a British ship.

XV. Where any British subject has in pursuance of this Act become an alien, he shall not thereby be discharged from any liability in respect of any acts done before the date of his so becoming an alien.

XVI. All laws, statutes, and ordinances which may be duly made by the legislature of any British possession for imparting to any person the privileges, or any of the privileges, of naturalization, to be

enjoyed by such person within the limits of such possession, shall within such limits have the authority of law, but shall be subject to be confirmed or disallowed by Her Majesty in the same manner, and subject to the same rules in and subject to which Her Majesty has power to confirm or disallow any other laws, statutes, and ordinances in that possession.

XVII. In this Act, if not inconsistent with the context or subject-matter thereof,—

"Disability" shall mean the status of being an infant, lunatic, idiot, or married woman;

"British possession" shall mean any colony, plantation, island, territory, or settlement within Her Majesty's dominions, and not within the United Kingdom, and all territories and places under one legislature are deemed to be one British possession for the purpose of this Act;

"The Governor of any British possession" shall include any person exercising the chief authority in such possession;

"Officer in the Diplomatic Service of Her Majesty" shall mean any Ambassador, Minister or Chargé d'Affaires, or Secretary of Legation, or any person appointed by such Ambassador, Minister, Chargé d'Affaires, or Secretary of Legation to execute any duties imposed by this Act on an officer in the Diplomatic Service of Her Majesty;

"Officer in the Consular Service of Her Majesty" shall mean and include Consul-General, Consul, Vice-Consul, and Consular Agent, and any person for the time being discharging the duties of Consul-General, Consul, Vice-Consul, and Consular Agent.

Repeal of Acts mentioned in Schedule.

XVIII. The several Acts set forth in the first and second parts of the schedule annexed hereto shall be wholly repealed, and the Acts set forth in the third part of the said schedule shall be repealed to the extent therein mentioned; provided that the repeal enacted in this Act shall not affect—

(1.) Any right acquired or thing done before the passing of this Act;

(2.) Any liability accruing before the passing of this Act;

(3.) Any penalty, forfeiture, or other punishment incurred or to be incurred in respect of any offense committed before the passing of this Act;

(4.) The institution of any investigation or legal proceeding, or any other remedy for ascertaining or enforcing any such liability, penalty, forfeiture, or punishment as aforesaid.

SCHEDULE.

NOTE.—Reference is made to the repeal of the "whole Act" where portions have been repealed before, in order to preclude henceforth the necessity of looking back to previous Acts.

This Schedule, so far as respects Acts prior to the reign of George the Second, other than Acts of the Irish Parliament, refers to the edition prepared under the direction of the Record Commission, intituled "The Statutes of the Realm; printed by Command of His Majesty King George the Third, in pursuance of an Address of the House of Commons of Great Britain. From original Records and authentic Manuscripts.

PART I.

ACTS WHOLLY REPEALED, OTHER THAN ACTS OF THE IRISH PARLIAMENT.

DATE.	TITLE.
7 Jas. 1. c. 2.	An Act that all such as are to be naturalized or restored in blood shall first receive the sacrament of the Lord's Supper, and the oath of allegiance, and the oath of supremacy.
11 Will. 3. c. 6.*	An Act to enable His Majesty's natural born subjects to inherit the estate of their ancestors, either lineal or collateral, notwithstanding their father or mother were aliens.
13 Geo. 2. c. 7.	An Act for naturalizing such foreign Protestants and others therein mentioned, as are settled or shall settle in any of His Majesty's colonies in America.

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* 11 & 12 Wm. 3. (Ruff.)

20 Geo. 2. c. 44. An Act to extend the provisions of an Act made in the thirteenth year of His present Majesty's reign, intituled "An Act for naturalizing foreign Protestants and others therein mentioned, as are settled or shall settle in any of His Majesty's colonies in America, to other foreign Protestants who conscientiously scruple the taking of an oath."

13 Geo. 3. c. 25. An Act to explain two Acts of Parliament, one of the thirteenth year of the reign of His late Majesty, "for naturalizing such foreign Protestants and others, as are settled or shall settle in any of His Majesty's colonies in America," and the other of the second year of the reign of His present Majesty, "for naturalizing such foreign Protestants as have served or shall serve as officers or soldiers in His Majesty's Royal American regiment, or as engineers in America."

14 Geo. 3. c. 84. An Act to prevent certain inconveniences that may happen by bills of naturalization.

16 Geo. 3. c. 52. An Act to declare His Majesty's natural born subjects inheritable to the estates of their ancestors, whether lineal or collateral, in that part of Great Britain called Scotland, notwithstanding their father or mother were aliens.

6 Geo. 4. c. 67. An Act to alter and amend an Act passed in the seventh year of the reign of His Majesty King James the First, intituled "An Act that all such as are to be naturalized or restored in blood shall first receive the sacrament of the Lord's Supper and the oath of allegiance and the oath of supremacy."

7 & 8 Vict. c. 66. An Act to amend the laws relating to aliens.

10 & 11 Vict. c. 83. An Act for the naturalization of aliens.

PART II.

ACTS OF THE IRISH PARLIAMENT WHOLLY REPEALED.

DATE.	TITLE.
14 & 15 Chas. 2. c. 13.	An Act for encouraging Protestant strangers and others to inhabit and plant in the kingdom of Ireland.
2 Anne, c. 14. . . .	An Act for naturalizing of all Protestant strangers in this kingdom.
19 & 20 Geo. 3. c. 29.	An Act for naturalizing such foreign merchants, traders, artificers, artizans, manufacturers, workmen, seamen, farmers, and others as shall settle in this kingdom.
23 & 24 Geo. 3. c. 38.	An Act for extending the provisions of an Act passed in this kingdom in the nineteenth and twentieth years of His Majesty's reign, intituled "An Act for naturalizing such foreign merchants, traders, artificers, artizans, manufacturers, workmen, seamen, farmers, and others as shall settle in this kingdom."
36 Geo. 3. c. 48. . .	An Act to explain and amend an Act, intituled "An Act for naturalizing such foreign merchants, traders, artificers, artizans, manufacturers, workmen, seamen, farmers, and others who shall settle in this kingdom."

PART III.

ACTS PARTIALLY REPEALED.

DATE.	TITLE.	EXTENT OF REPEAL.
4 Geo. 1. c. 9. (Act of Irish Parliament.)	An Act for reviving, continuing, and amending several statutes made in this kingdom heretofore temporary.	So far as it makes perpetual the Act of 2 Anne, c. 14.
6 Geo. 4. c. 50.	An Act for consolidating and amending the laws relative to Jurors and Juries.	The whole of sect. 47.

3 & 4 Will. 4. c. 91.	An Act consolidating and amending the laws relating to Jurors and Juries in Ireland.	The whole of sect. 37.

(Printed from official edition.)

(3.) CONVENTION

BETWEEN HER MAJESTY AND THE UNITED STATES OF AMERICA RELATIVE TO NATURALIZATION, SIGNED AT LONDON, MAY 13, 1870.

[*Ratifications exchanged at London, August* 10, 1870.]

Her Majesty, the Queen of the United Kingdom of Great Britain and Ireland, and the President of the United States of America, being desirous to regulate the citizenship of British subjects who have emigrated or who may emigrate from the British dominions to the United States of America, and of citizens of the United States of America who have emigrated or who may emigrate from the United States of America to the British dominions, have resolved to conclude a Convention for that purpose, and have named as their Plenipotentiaries, that is to say, &c.

ARTICLE I.

British subjects who have become, or shall become, and are naturalized according to law within the United States of America as citizens thereof, shall, subject to the provisions of Article II, be held by Great Britain to be in all respects and for all purposes citizens of the United States, and shall be treated as such by Great Britain.

Reciprocally: citizens of the United States of America who have become, or shall become, and are naturalized according to law within the British dominions as British subjects, shall, subject to the provisions of Article II, be held by the United States to be in all respects and for all purposes British subjects, and shall be treated as such by the United States.

ARTICLE II.

Such British subjects as aforesaid who have become and are naturalized as citizens within the United States, shall be at liberty to

renounce their naturalization and to resume their British nationality, provided that such renunciation be publicly declared within two years after the twelfth day of May, 1870.

Such citizens of the United States as aforesaid who have become and are naturalized within the dominions of her Britannic Majesty as British subjects, shall be at liberty to renounce their naturalization and to resume their nationality as citizens of the United States, provided that such renunciation be publicly declared within two years after the exchange of the ratifications of the present Convention.

The manner in which this renunciation may be made and publicly declared shall be agreed upon by the Governments of the respective countries.

ARTICLE III.

If any such British subject as aforesaid, naturalized in the United States, should renew his residence within the dominions of Her Britannic Majesty, Her Majesty's Government may, on his own application, and on such conditions as that Government may think fit to impose, readmit him to the character and privileges of a British subject, and the United States shall not, in that case, claim him as a citizen of the United States on account of his former naturalization.

In the same manner, if any such citizen of the United States as aforesaid, naturalized within the dominions of Her Britannic Majesty, should renew his residence in the United States, the United States' Government may, on his own application, and on such conditions as that Government may think fit to impose, re-admit him to the character and privileges of a citizen of the United States, and Great Britain shall not, in that case, claim him as a British subject on account of his former naturalization.

(This convention, unlike all others respecting naturalization, concluded by the United States, contains no stipulations respecting its duration.)

(4.) CONVENTION

BETWEEN HER MAJESTY AND THE UNITED STATES OF AMERICA, SUPPLEMENTARY TO THE CONVENTION OF MAY 13, 1870, RESPECTING NATURALIZATION.—SIGNED AT WASHINGTON, FEBRUARY 23, 1871.

(*Ratifications exchanged at Washington, May* 4, 1871.)

Whereas by the second article of the Convention between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland and the United States of America, for regulating the citizenship of subjects and citizens of the contracting parties who have emigrated or may emigrate from the dominions of the one to those of the other party, signed at London on the 13th of May, 1870, it was stipulated that the manner in which the renunciation by such subjects and citizens of their naturalization, and the resumption of their native allegiance, may be made and publicly declared, should be agreed upon by the governments of the respective countries; Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the President of the United States of America, for the purpose of effecting such agreement, have resolved to conclude a Supplemental Convention, and have named as their plenipotentiaries, that is to say:

ARTICLE I.

Any person being originally a citizen of the United States, who had, previously to May 13, 1870, been naturalized as a British subject, may at any time before August 10, 1872, and any British subject who, at the date first aforesaid, had been naturalized as a citizen within the United States, may, at any time before May 12, 1872, publicly declare his renunciation of such naturalization by subscribing an instrument in writing, substantially in the form hereunto appended, and designated as Annex A.

Such renunciation, by an original citizen of the United States, of British nationality, shall, within the territories and jurisdiction of the United States, be made in duplicate, in the presence of any court authorized by law for the time being to admit aliens to naturalization, or before the clerk or prothonotary of any such court; if the declarant be beyond the territories of the United States, it shall be made in duplicate, before any diplomatic or consular officer of the United States. One of such duplicates shall remain of record in

the custody of the court or officer in whose presence it was made; the other shall be, without delay, transmitted to the Department of State.

Such renunciation, if declared by an original British subject, of his acquired nationality as a citizen of the United States, shall, if the declarant be in the United Kingdom of Great Britain and Ireland, be made in duplicate, in the presence of a justice of the peace; if elsewhere in Her Britannic Majesty's dominions, in triplicate, in the presence of any judge of civil or criminal jurisdiction, of any justice of the peace, or of any other officer for the time being authorized by law, in the place in which the declarant is, to administer an oath for any judicial or other legal purpose; if out of Her Majesty's dominions, in triplicate, in the presence of any officer in the diplomatic and consular service of Her Majesty.

ARTICLE II.

The contracting parties hereby engage to communicate each to the other, from time to time, lists of the persons who, within their respective dominions and territories, or before their diplomatic and consular officers, have declared their renunciation of naturalization, with the dates and places of making such declarations, and such information as to the abode of the declarants, and the times and places of their naturalization, as they may have furnished.

ANNEX (A).

I, A. B., of (*insert abode*), being originally a citizen of the United States of America (*or a British subject*), and having become naturalized within the dominions of Her Britannic Majesty as a British subject (*or as a citizen within the United States of America*), do hereby renounce my naturalization as a British subject (*or citizen of the United States*); and declare that it is my desire to resume my naturalization as a citizen of the United States (*or British subject*).

(Signed) *A. B.*

Made and subscribed before me, in (*insert country or subdivision, and state, province, colony, legation, or consulate*), this day of , 187 .

(Signed) *E. F.*,

Justice of the Peace (*or other title*).

(These conventions are printed from British official documents. They will also be found in Treaties United States, 1870–1, p. 399; *ib.* 1871, p. 15.)

V.

CONVENTION

BETWEEN THE UNITED STATES OF AMERICA AND THE AUSTRO-HUNGARIAN MONARCHY.—NATURALIZATION.—SIGNED SEPTEMBER 20, 1870; RATIFIED MARCH 24, 1871; RATIFICATIONS EXCHANGED JULY 14, 1871; PROCLAIMED AUGUST 1, 1871.

The President of the United States of America and His Majesty the Emperor of Austria, King of Bohemia, etc., and Apostolic King of Hungary, led by the wish to regulate the citizenship of those persons who emigrate from the United States of America to the territories of the Austro-Hungarian Monarchy, and from the Austro-Hungarian Monarchy to the United States of America, have resolved to treat on this subject, and have for that purpose appointed Plenipotentiaries to conclude a Convention, that is to say, &c.:

ARTICLE I.

Citizens of the Austro-Hungarian Monarchy who have resided in the United States of America uninterruptedly at least five years, and during such residence have become naturalized citizens of the United States, shall be held by the government of Austria and Hungary to be American citizens, and shall be treated as such.

Reciprocally: citizens of the United States of America who have resided in the territories of the Austro-Hungarian Monarchy uninterruptedly at least five years, and during such residence have become naturalized citizens of the Austro-Hungarian Monarchy, shall be held by the United States to be citizens of the Austro-Hungarian Monarchy, and shall be treated as such.

The declaration of an intention to become a citizen of the one or the other country has not for either party the effect of naturalization.

ARTICLE II.

A naturalized citizen of the one party, on return to the territory of the other party, remains liable to trial and punishment for an action punishable by the laws of his original country committed before his emigration, saving always the limitation established by the laws of his original country, and any other remission of liability to punishment.

In particular, a former citizen of the Austro-Hungarian Monarchy, who, under the first article, is to be held as an American citizen, is liable to trial and punishment, according to the laws of Austro-Hungary, for non-fulfillment of military duty:

1st. If he has emigrated, after having been drafted at the time of conscription, and thus having become enrolled as a recruit for service in the standing army.

2d. If he has emigrated whilst he stood in service under the flag, or had a leave of absence only for a limited time.

3d. If, having a leave of absence for an unlimited time, or belonging to the reserve or to the militia, he has emigrated after having received a call into service, or after a public proclamation requiring his appearance, or after war has broken out.

On the other hand, a former citizen of the Austro-Hungarian Monarchy naturalized in the United States, who by or after his emigration has transgressed the legal provisions on military duty by any acts or omissions other than those above enumerated in the clauses numbered one, two, and three, can, on his return to his original country, neither be held subsequently to military service, nor remain liable to trial and punishment for the non-fulfillment of his military duty.

ARTICLE III.

The convention for the mutual delivery of criminals, fugitives from justice, concluded on the 3d July, 1856, between the government of the United States of America, on the one part, and the Austro-Hungarian Monarchy, on the other part, as well as the additional convention, signed on the 8th May, 1848, to the treaty of commerce and navigation concluded between the said governments on the 27th of August, 1829, and especially the stipulations of Article IV of the said additional convention concerning the delivery of the deserters from the ships of war and merchant vessels, remain in force without change.

ARTICLE IV.

The emigrant from the one State, who, according to Article I, is to be held as a citizen of the other State, shall not, on his return to his original country, be constrained to resume his former citizenship; yet if he shall of his own accord reacquire it, and re-nounce the citizen-

ship obtained by naturalization, such a renunciation is allowable, and no fixed period of residence shall be required for the recognition of his recovery of citizenship in his original country.

ARTICLE V.

The present convention shall go into effect immediately on the exchange of ratifications, and shall continue in force ten years. If neither party shall have given to the other six months' previous notice of its intention then to terminate the same, it shall further remain in force until the end of twelve months after either of the contracting parties shall have given notice to the other of such intention.

ARTICLE VI.

The present convention shall be ratified by the President of the United States, by and with the consent of the Senate of the United States, and by His Majesty the Emperor of Austria, etc., King of Hungary, with the constitutional consent of the two legislatures of the Austro-Hungarian Monarchy, and the ratifications shall be exchanged at Vienna within twelve months from the date hereof.

(Printed from treaty, accompanying President's proclamation.)

III.

The following is a Synopsis of the Laws of the different States, respecting the holding of Real Estate by Aliens, as far as we are enabled to state them from the most recent publications within our reach:

In *Vermont*, there being no statutory provision, the common law remains. (See General Statutes, Vermont, 1870.)

In *New Hampshire*, alien residents may take, purchase, hold, convey, or devise real estate, and the same may descend in the same way as if they were native citizens. (Statutes, 1853, c. 135, § 1, p. 252; Statutes, 1867, p. 253.)

In *Massachusetts*, aliens may take, hold, convey, and transmit real estate. (General Statutes, 1860, chap. 91, § 38.)

In *Connecticut*, alien residents of the State, or of the United States may purchase, hold, or transmit real estate, in the same manner as native born citizens; and an alien, not resident, may acquire real estate for mining purposes, and transmit the same in the same manner as though he was a native born citizen. (Revised Statutes, 1866, p. 537.)

In *Rhode Island*, by act of February 7, 1868, all disabilities in aliens taking, holding, conveying, and transmitting title to real estate situated within this State, are removed, and aliens may sue for and recover possession of real estate in the same way, and with the same effect, as native born citizens of the United States. (Public Laws of Rhode Island, 1867–1869, p. 472.)

In *Maine*, aliens may take, hold, convey, and devise real estate. (Revised Statutes, 1857, p. 449, title 7, c. 73, § 2; Ed. 1871, p. 552.)

In *New York*, alien heirs or devisees cannot take from citizens, native or naturalized, by descent or devise. Marriage of a *feme sole* with an alien husband, and her subsequent residence abroad, do not constitute her an alien, but she is still entitled to take by devise. The children of such marriage, born and living in a foreign country, are aliens, and cannot take by devise. (Barbour's Reports, vol. IX, pp. 35, 49, Beck *vs.* McGillis.)

Any alien who comes into the United States may make deposition that he is a resident of the State, and intends always to reside in the United States, and to become a citizen as soon as he can be naturalized; and that he has taken the incipient measures to obtain naturalization; and, on filing such deposition, he shall be enabled to take and hold lands to him, his heirs and assigns, for ever, and may, during six years, sell, assign, mortgage, devise, and dispose of the same, except that no such alien shall have power to lease or demise any estate, held under this provision till he is naturalized. When such alien shall die within six years, leaving heirs inhabitants of the United States, such heirs shall take by descent, in the same manner as they would have inherited if such alien had been at the time of his death a citizen. (Statutes at Large, Revised Statutes, vol. I, p. 669.)

Besides titles acquired under particular acts, as those of 1798, 1802, 1808 (see Statutes at Large, vol. IV, pp. 294, 295, 296, 297, 299, 300), decided to be transmissible to successive alien heirs, according to the most recent decisions, a resident alien, even though he may not have filed a deposition, according to the Revised Statutes, of his intention to become a citizen, may, by the act of 1845, take and

transmit real estate to his alien heirs, who may hold it subject to escheat if males, if they do not file the required deposition of intention before the consummation of proceedings by the State. (New York Reports (Hand. III), vol. XLII, p. 178.)

In *New Jersey*, aliens not subjects of a power at war with the United States, may purchase lands, &c., and hold the same to their heirs and assigns as fully as any native born citizen. (Nixon's Digest of the Laws of New Jersey, 1709–1868, p. 6.)

In *Pennsylvania*, every person being a citizen of a foreign State, may take or acquire, by devise or descent, lands, and hold and dispose of the same in as full a manner as citizens, and by act of May 1, 1861, aliens may purchase, possess, and transmit real estate not exceeding 5,000 acres and $20,000 in value. (Purdon's Digest, 1700–1870, p. 44, § 1.)

By the Revised Statutes of Pennsylvania, as reported to the legislature in 1871, aliens whose government is, at the time thereof, at peace with the government of the United States, may acquire, by purchase or descent, lands not exceeding 2,000 acres in this State, and transmit the same, by contract or devise, or through the intestate laws of the State. (Revised Statutes, by Derickson & Hal, 1871, p. 190.)

In *Delaware*, an alien, residing in the State, and having declared his intention to be a citizen, is capable of taking and holding, or of aliening land, &c.; and upon the death of an alien, having a right to real estate by purchase or descent, according to this act intestate, as to such lands, they shall descend to and in the same manner as if the said alien was a citizen of the United States, and it shall be no objection to the kindred, husband or widow of such alien, or of any citizen deceased, taking lands, &c., by virtue of the intestate law of the State, that they are aliens, if, at the time of his death, they reside within the United States, and any such kindred being aliens, and not residing in the United States at intestate's death, shall be passed by, and the effect shall be the same as if they were dead. (Delaware Revised Statutes, 1852, tit. 12, § 1, p. 260.)

The *Maryland* law (Code of Laws, art. 481), aliens actual residents of the State, may take and hold real estate by purchase, or to which, if citizens, they would be entitled by descent, provided, if any male alien acquire any interest in any real estate, he shall, within one year, declare his intention to become a citizen and naturalize himself within twelve months of his being capable to do so; and if he

die within a year after acquiring such estate without making a declaration, or if he die within the time prescribed for becoming a citizen, it shall descend to his heirs, provided his heirs, if male aliens, comply with the conditions of the Statute. (Maryland Code, 1860, vol. I, p. 18.)

In *Ohio*, aliens may hold, possess, and transmit lands as completely as a citizen of the United States. (Swain's Revised Statutes, p. 40.)

In *Iowa*, by the Constitution, "Foreigners who are, or may become residents of this State, shall enjoy the same rights in respect to the possession, enjoyment, and descent of property, as native born citizens" (Laws of Iowa, Ed. 1860, p. 971), but non-resident aliens are incapable of holding lands. (Iowa Rep. vol. XX, p. 45.)

In *Indiana*, the Statute of 1861 has removed the common law disabilities of an alien to take by descent or devise, but the time during which a non-resident alien may hold, &c., real estate, expires eight years after the final settlement of decedent's estate. If a non-resident alien, who has acquired by descent or devise, die before expiration of that time, his heirs, if non-resident aliens, shall hold with the same provision, and if citizens or *bona fide* residents of the United States, they shall inherit as if ancestors or devisors were citizens. (Davis' Supplement to Statutes of Indiana, p. 14.)

In *Illinois*, all aliens may take, by deed, will, or otherwise, lands and tenements, and alienate, sell, assign, and transmit them to their heirs, or any other persons, whether citizens of the United States or not; "and it shall be no objection to any persons having an interest in such estate that they are not citizens of the United States, but all such persons shall have the same rights and remedies, and in all things be placed on the same footing as natural born citizens and actual residents of the United States." (Cross' Statutes of Illinois, 1870, p. 7.)

In *Minnesota*, any alien may take and hold real estate, and no title to real estate shall be invalid on account of the alienage of the former owner. (Statutes of Minnesota, 1866, p. 541.)

In *Nebraska*, the rule is the same as in Minnesota. (Revised Statutes, 1861, p. 292.)

In *Nevada*, it is provided by the Constitution that foreigners who are, or may hereafter, become *bona fide* residents, shall enjoy the same rights in respect to the possession, enjoyment, and inheritance of property, as native born citizens. (Constitution, art. 1, § 16.)

In *Wisconsin*, by the Constitution of 1849, no distinction can be made, by law, between resident aliens and citizens, in reference to the possession, enjoyment, or descent of property. And by Statute, any alien may acquire and hold lands by purchase, devise or descent, and convey and devise the same, and in case of intestacy, they shall descend to his heirs. (Revised Statutes, Wisconsin, 1858, p. 549.)

In *Kansas*, no distinction shall ever be made between citizens and aliens, in reference to the purchase, enjoyment, or descent of property. (Bill of Rights, § 17, General Statutes of Kansas, 1868, p. 40.)

In *Kentucky* (Stanton's Revised Statutes, 1860, vol. I, p. 239), an alien friend who has resided in the State two years, shall after that period, during his residence, be enabled to receive, inherit, hold and pass by descent, devise, or otherwise, real or personal property. Any woman whose husband is, or shall be, a citizen of the United States, and any person whose father or mother, at the time of his or her birth, was, or shall be, a citizen thereof, although born out of the United States, may take and hold real and personal property by devise, purchase, descent, or devolution.

In *Oregon*, "white foreigners who are or may hereafter become residents of this State, shall enjoy the same rights in respect to the possession, enjoyment, and descent of property, as native born citizens." (Constitution of Oregon, art. I, § 31.) And by Statute, any alien may acquire and hold land or any right therein by purchase, devise, or descent; and he may convey, mortgage, and devise the same, and if he shall die intestate, the same shall descend to his heirs. (General Laws of Oregon, 1845–1864, p. 718.)

In *California*, aliens shall hereafter inherit, and hold by inheritance, real and personal estate in as full a manner as though they were native born citizens of this State or the United States; provided, that no non-resident foreigner or foreigners shall hold or enjoy any real estates situated within the limits of the State of California five years after the time such non-resident foreigner or foreigners shall inherit the same; but in case such non-resident foreigner or foreigners do not appear or claim such estate within the period in this section before mentioned, then such estate shall be sold upon information of the Attorney-General, according to law, and the proceeds deposited in the treasury of said estate, for the benefit of such non-resident foreigner or foreigners, or their legal representatives. And if no non-resident foreigner makes claim within the extended term of five years, the proceeds shall be placed to the credit of the school fund. (General Laws of California, 1859–1864, art. 2606, p. 356.)

In *Michigan.* "By the Constitution of Michigan, aliens who are or who may hereafter become *bona fide* residents of this State, shall enjoy the same rights in respect to the possession, enjoyment, and inheritance of property as native born citizens." (Constitution, 1850, art. 18, § 13.) And by Statute, any alien may acquire and hold lands by purchase, devise, or descent; and may convey, mortgage, and devise the same; and if he dies intestate, the same shall descend to his heirs, &c., in the same manner, and with like effect, as if he were a native citizen of the United States. (Compiled Laws of Michigan, 1857, vol. II, p. 857.)

In *Missouri*, aliens residing in the United States, who have made a declaration of their intention to become citizens of the United States, by taking the oath required by law, and all aliens residents of this State, are capable of acquiring real estate in this State by descent or purchase, and of holding and alienating the same, and shall incur the like duties and liabilities, in relation thereto, as if they were citizens of the United States.

Aliens acquiring real estate by descent or devise, and incapable of holding the same by reason of their alienage, may sell and convey any real estate so acquired within three years after settlement of the estate of the deceased. (Act of Nov. 17, 1855; Revised Statutes of 1856, ch. v.) Any alien, who, but for his alienage, would be capable, of acquiring real estate by descent or devise, may sell and convey any land he may hereafter acquire by devise or descent, from any person hereafter dying, and it shall pass all the title he may acquire by descent or devise. (Missouri Laws, Ed. 1865, p. 448; Wagner's Missouri Statute, 1870, vol. I, p. 132.)

In *Virginia*, an alien residing in the State, who shall make oath before some court of record in said State, declaring his intention to continue to reside therein, may inherit, purchase, and hold real estate as if he were a citizen of the State, and may convey and devise the same, and it shall descend, if he die intestate, to his heirs, and any alien as devisee or heir, whether citizen or alien, may take, under such alienation, provided he shall, if an alien, within five years come, or be in this State within five years, and declare before a court of record that he intends to reside therein.

The wife of a citizen of the United States, and any one whose father or mother was, at the time of his birth, a citizen, though born out of the United States, may take and hold real estate by devise, purchase or inheritance. (Code of 1860, title 33, ch. 115, §§ 1, 2, 3, 4.)

West Virginia, Code of 1868, p. 458: Alien, not an enemy, who shall declare before a court of record that he intends to continue to reside in this State, may, if actually resident, inherit, purchase and hold real estate, as if he were a citizen; and may convey or devise the same, and if intestate, it shall descend to his heirs; and the alienee, devisee or heir may take and hold, provided he comes or be in the State within five years, and declare his intention to reside there.

In *Florida*, aliens of any country or nation whatever, may purchase, hold, enjoy, sell, convey or devise any lands and tenements in in this State, to the same extent, and with the same right as citizens of the United States, and may derive title by descent through aliens. (Acts of Nov. 17, 1829, and Feb. 17, 1833; Thompson's Digest, title 2, chap. i, § 3, p. 190.)

In *Alabama*, there is no modification of the common law in favor of aliens, when the devisees are incapable of taking, and if there are no lawful heirs the property escheats. (Revised Code of Alabama, 1867, p. 500.)

In *Louisiana*, the common law does not prevail, and foreigners are not there subjected to any disability as to real estate.

In *North Carolina*, there is no modification of the common law in favor of aliens.

Georgia, Code of 1868, p. 333: Aliens, subjects of governments at peace with the United States and this State, so long as their governments remain at peace, shall be entitled to all the rights of citizens of other States resident in this State, and shall have the privilege of purchasing, holding, and conveying real estate in this State.

In *Texas*, the Constitution of the Republic and Statutes of 1840, changed the rule of the common law which excluded aliens from the inheritance of lands, so as to create a defeasable estate in the heirs of a citizen of the Republic dying intestate or otherwise.

Upon the death of the owner, the title instantly vested, subject to be defeated by the failure of the heir or heirs to become citizens, or to dispose of the estate, by sale, within the period prescribed by the Statute. The estate is one upon condition that within nine years from the death of the ancestor, the heirs shall become citizens, or shall sell the land. The law annexed this condition to the estate. It was a condition in law, or more properly a limitation than a condition, and the estate, it would seem, was a qualified or determinable fee, determinable upon the failure to perform the condition within the time limited for its performance. The heirs upon whom the descent is cast,

failing to comply with the condition of the law before the expiration of the period, no more distant relations, who may have become citizens, are entitled to take, but the estate goes to the State. (25 Texas Reports, p. 233, Bailey *v.* Cameron.)

By the act of March 8, 1848, in making title by descent, it shall be no bar that any ancestor is or was an alien, and every alien to whom land may descend or be devised, shall have nine years to become a citizen or to sell the same.

By act of 13th February, 1854, any alien, being a free white person, shall have and enjoy in the State of Texas such rights as are or shall be accorded to American citizens by the laws of the nation to which such alien belongs, or by the treaties of such nation with the United States.

Aliens may take and hold any property, real or personal, in this State, by devise or descent from an alien or citizen, in the same manner in which a citizen of the United States may take and hold real or personal property, by devise or descent, within the country of such alien.*

Any alien, being a free person, who shall become a resident of this State, and shall, in conformity with the naturalization laws of the United States, have declared his intention to become a citizen of the United States, shall have the right to acquire and hold real estate in this State in the same manner as if he was a citizen of the United States. The act of 1848, so far as it is inconsistent with this act, is repealed. (Laws of Texas, Paschal's Digest, 1870, p. 160.)

In *South Carolina*, any citizen or alien who has entered into any *bona fide* contract, or who has received any grant or deed of conveyance for or relating to any real property in this State, or whose titles are derived from or through aliens, either mediately or immediately, may and shall hold and enjoy the same in fee simple, or for any less estate, according to the nature of his contract, grant or deed, any law, usage or custom to the contrary notwithstanding; provided, however, that every alien shall, before he be entitled to the benefits of the act, declare his or her intention of becoming a citizen of the United States.

By the second section of the same act, aliens can devise and convey the property acquired by virtue of the act, to children and grand-

* These provisions would seem to have been passed to carry out the provisions of the Convention of 1853 with France.

children who were born previously to the acquisition of the property; and, in case of non-alienation, or of dying intestate, the property is distributable among their relations under the Distribution Act of the State; provided, however, that the child, grandchild or distributee to whom the property is conveyed, devised or distributed, as the case may be, shall, within twelve months, become a resident of the State, and a citizen thereof, as soon as the laws permit. (Statutes, vol. V, p. 547, § 1.)

In *Arkansas*, aliens residing in the State, who have made declaration according to law, of their intention to become citizens of the United States, are capable of taking, by deed or will, and holding, aliening or devising real estate; and, upon the decease of any alien having title by purchase or descent, according to this act, of any real estate, it shall descend and pass as if such alien were a citizen of the United States, and the husband, widow or kindred of the deceased alien, or of any citizen may inherit, notwithstanding they are aliens, if, at the time of the death, they are resident within the United States. (Act of December 6, 1837; Digest of Statutes, 1858, ch. ix.)

In *Tennessee*, an alien may take and hold real estate in this State, by purchase, inheritance, or in any other way which may be agreed upon, by treaty between the United States and the country of which he is a citizen or subject.

Any alien resident in this State, who has legally declared his intention under the naturalization laws, to become a citizen of the United States, may take and hold, dispose of or transmit, by descent, any real estate, as a native citizen.

An alien who is resident in the United States at the time of the death of an intestate, and has declared, or shall, within twelve months thereafter declare, his intention to become a citizen, shall be capable of inheriting the estate of such intestate. (Code, 1858, p. 407.) By the act of Feb. 15, 1870, a non-resident alien may acquire real estate by descent or devise, and hold, sell, alienate and convey the same as if he was a citizen of the United States, but his right to hold, &c., expires seven years after the settlement of the decedent's estate. If the non-resident alien dies before the expiration of the time in possession, his heirs or devisees, if they are non-resident aliens, shall acquire and hold under the act, but if citizens, they shall inherit, as if such ancestor or devisor were a citizen of the United States. This act shall apply only to citizens of other countries, which confer, by treaty

and public laws, similar privileges on citizens of the United States. (Shankland, p. 104.)

In *Mississippi*, an alien residing in the State may acquire real estate, but he cannot transmit it without being naturalized. If he dies before naturalization, his real estate will escheat to the State, but the proceeds will be paid to the heirs, if applied for within six years. (Revised Code, 1857, chap. 36, sec. 9, art. 65, pp. 320–1.)

The law of Colorado was in the same words as that of Illinois as to the tenure and transmission of lands by and to aliens, except that it contained words restricting it to aliens "residing in this territory." (Revised Statutes of Colorado, 1868, vol. I, p. 46.) By an act passed 10th Feb., 1870, these words are stricken out, and all aliens may acquire and transmit lands there. (General Laws of Colorado, 1870, p. 43.)

By a law of Maryland, adopted as the law of the District of Columbia, by act of Congress passed 27th February, 1801, any foreigner may, by deed or will, take and hold lands within that part of the territory of Columbia, which was in that State, and the same land may be conveyed by him, and transmitted to, and be inherited by, his heirs or relatives, as if he or they were citizens of that State. (Thompson's Digest of the Laws of District of Columbia, p. 75.)

IV.

TREATIES

OF THE UNITED STATES WITH FOREIGN POWERS IN REFERENCE TO THE TRANSMISSION OF REAL ESTATE TO ALIENS.

I.

GREAT BRITAIN.

Neither the provisional articles of November 30, 1782, nor the definitive treaty of September 30, 1783, acknowledging the independence of the United States by Great Britain, makes any stipulations as to the titles of real estate held by the subjects or citizens of the respective parties in the dominions of the other, further than that the fifth article of the two acts, which are identical, declares that Congress shall

earnestly recommend to the legislatures of the respective States to provide for the restitution of all estates, rights, and property which have been confiscated, belonging to real British subjects, and also of the estates, &c., of persons resident in districts in the possession of His Majesty's arms, and who have not borne arms against the United States. And that persons of any other description shall have free liberty to go to any part of the thirteen United States and therein to remain twelve months, unmolested in their endeavors to obtain restitution of such of their estates, &c., as may have been confiscated, and that Congress shall also earnestly recommend to the several States a reconsideration and revision of all acts or laws regarding the premises, so as to render the said laws or acts perfectly consistent not only with justice and equity, but with that spirit of conciliation which, on the return of the blessings of peace, should universally prevail; and that Congress should also recommend to the several States that the estates, &c., of last mentioned persons shall be restored to them, they refunding to any persons in possession the *bona fide* price (where any has been given) which such persons may have paid on purchasing any of the said lands, rights, and properties, since the confiscation; and it is agreed, that all persons who have any interest in confiscated lands, either by debts, marriage settlements, or otherwise, shall meet with no lawful impediment in the prosecution of their just rights. By article VI, likewise the same in both treaties, there shall be no further confiscations nor any prosecution be commenced against any person by reason of the part he may have taken in the war, and that no person shall on that account suffer any future loss or damage either in his person, liberty, or property. (United States Statutes at Large, vol. VIII, pp. 56 and 82.)

[The following stipulation applying to the titles as they existed before American independence, is in accordance with the rule of the laws of nations, that a dismemberment of the empire works no forfeiture of previously vested rights of property.]

The treaty of November 17, 1794, provides: Art. IX. "It is agreed that British subjects who now hold lands in the territories of the United States, and American citizens who now hold lands in the dominions of His Majesty, shall continue to hold them according to the nature and tenure of their respective estates and titles therein; and may grant, sell, or devise the same to whom they please, in like manner as if they were natives; and that neither they nor their heirs or assigns shall, so far as may respect the said lands and the legal remedies incident

thereto, be regarded as aliens." (United States Statutes at Large, vol. VIII, p. 122.)

[This article was one of those declared by the treaty to be permanent, but the question was raised in both countries as to the effect of the war of 1812 upon it.

The English Court of Chancery held that American citizens who held land in Great Britain, at the time of the conclusion of the treaty, are at all times, and notwithstanding the intervention of war, to be considered as regards those lands, not as aliens, but as native subjects of the crown of Great Britain. (Russell and Milne's Reports, vol. I, p. 663, Sutton *v.* Sutton.)

The same principle was maintained by the Supreme Court of the United States (Wheaton's Reports, vol. VIII, p. 464; The Society for the Propagation of the Gospel in Foreign Parts *v.* The Town of New Haven.]

II.

FRANCE.

(1) The Treaty of Commerce with France, concluded February 6, 1778, and consequently before the adoption of the Constitution, provides that "the subjects and inhabitants of the United States, or any of them, shall not be reputed *aubains* in France, and consequently shall be exempted from the *droit d'aubaine* or other similar duty. They may by testament, donation, or otherwise, dispose of their goods, *movable* and *immovable*, in favor of such persons as to them shall seem good, and their heirs, subjects of the United States, whether residing in France or elsewhere, may succeed them *ab intestato*, without being obliged to obtain letters of naturalization, and without having the effect of this concession contested or impeded under pretext of any rights or prerogatives of provinces, cities or private persons; and the said heirs, whether such by particular title or *ab intestato*, shall be exempt from all duty called *droit de detraction*, or other duty of the same kind, saving, nevertheless, the local rights or duties as such, and as long as similar ones are not established by the United States, or any of them. The subjects of the Most Christian King shall enjoy, on their part, in all the dominions of the said States, an entire and perfect reciprocity relating to the stipulations contained in the present article. This article was not to affect laws against emigration.

This treaty was repealed by act of Congress, or declared so to be, February 6, 1778. (United States Statutes at Large, vol. VIII, p. 18.)

(2.) *The Convention with the French Republic, Sept.* 30, 1800, *provides:*

ARTICLE VII.

"The citizens and inhabitants of the United States shall be at liberty to dispose by testament, donation, or otherwise, of their goods movable and immovable, holden in the territory of the French Republic in Europe, and the citizens of the French Republic shall have the same liberty with regard to goods, movable and immovable, holden in the territory of the United States, in favor of such persons as they shall think proper. The citizens and inhabitants of either of the two countries, who shall be heirs of goods, movable or immovable, in the other, shall be able to succeed *ab intestato*, without being obliged to obtain letters of naturalization, and without having the effect of this provision contested or impeded, under any pretext whatever; and the said heirs, whether such by particular title, or *ab intestato*, shall be exempt from any duty whatever in both countries. It is agreed that this article shall in no manner derogate from the laws which either State may now have in force, or hereafter may enact, to prevent emigration; and also that in case the laws of either of the two States should restrain strangers from the exercise of the rights of property with respect to real estate, such real estate may be sold, or otherwise disposed of, to citizens or inhabitants of the country where it may be, and the other nation shall be at liberty to enact similar laws." (United States Statutes at Large, vol. VIII, p. 182.)

[This treaty was limited to eight years from the exchange of ratification, July 31, 1801, and has consequently expired, but it has been held by the Supreme Court of the United States, that the provision in relation to the descent of lands in the treaty was not affected by this limitation; that a right once vested does not require, for its preservation, the continued existence of the power by which it was acquired. If a treaty, or any other law, has performed its office by giving a right, the expiration of the treaty or the law cannot extinguish the right. (Wheaton's Reports, vol. II, p. 277, Chirac *v.* Chirac.]

(3) *By the treaty of Feb.* 23*d*, 1853, *with the Emperor of the French, Article VII, it is stipulated:*

"In all the States of the Union, whose existing laws permit it, so long and to the same extent as the said laws shall remain in force, Frenchmen shall enjoy the right of possessing personal and real prop-

erty by the same title and in the same manner as the citizens of the United States. They shall be free to dispose of it as they may please, either gratuitously, or for value received, by donation, testament, or otherwise, just as those citizens themselves; and in no case shall they be subject to taxes on transfer, inheritance, or any others different from those paid by the latter, or to taxes which shall not be equally imposed.

"As to the States of the Union, by whose existing laws aliens are not permitted to hold real estate, the President engages to recommend to them the passage of such laws as may be necessary for the purpose of conferring this right.

"In like manner, but with the reservation of the ulterior right of establishing reciprocity in regard to possession and inheritance, the government of France accords to the citizens of the United States the same rights within its territory in respect to real and personal property, and to inheritance, as are enjoyed there by its own citizens." (United States Statutes at Large, vol. X, p. 996.)

III.

NETHERLANDS AND SWEDEN.

The treaty of Oct. 8, 1782, with the United Netherlands, Art. VI, authorizing the subjects of the contracting parties to dispose of their effects by testament, donation, or otherwise, contains terms as "*heirs*," which might technically apply to real estate, but it was not, it is believed, ever so understood. (United States Statutes at Large, vol. VIII, p. 36.)

The same remark holds as to the Treaty of April 3, 1783, with Sweden, Art. VI, concluded for fifteen years, and which provision has been twice renewed since the adoption of the Constitution, by Treaty of Sept. 4, 1816, Art. XII, and by Art. XVII, Treaty of July 4, 1827. The last treaty is still in force, it having been concluded for ten years, and to remain in force till after notice of twelve months. (*Ib.* vol. VIII, pp. 64, 240, 354.)

IV.

GERMANY.

(1) *The treaty with Prussia*, July, August, and September, 1785, Art. X, after providing for the personal property, contains the following stipulation: "And where, on the death of any person holding real

estate within the territories of the one party, such real estate would, by the laws of the land, descend on a citizen or subject of the other, were he not disqualified by alienage, such subject shall be allowed a reasonable time to sell the same, and to withdraw the proceeds without molestation, and exempt from all rights of *detraction* on the part of the government of the respective States. But this article shall not derogate in any manner from the force of the laws already published, or hereafter to be published, by His Majesty the King of Prussia, to prevent the emigration of his subjects."

This provision was included in terms in the Treaty of July 11, 1799, Art. X, the first treaty with Prussia after the adoption of the Constitution, and also in the Treaty of May 1, 1828, Art. XIV. It is still in force, the last treaty having been concluded for twelve years, but to be continued till after notice of twelve months. (United States Statutes at Large, vol. VIII, pp. 88, 166, 384.)

The other Treaties with German States are as follows:

(2) *Convention with the Hanseatic Towns, Dec* 20, 1827:

The disposition in Art. VII as to real estate differs from the Prussian, as providing a definite period in which real estate is to be disposed of. It says: "If in the case of real estate, the said heirs would be prevented from entering into the possession of the inheritance on account of their character of aliens, there shall be granted to them the term of *three years* to dispose of the same, as they may think proper, and to withdraw the proceeds without molestation, and exempt from all duties of detraction on the part of the government of the respective States." The treaty was for ten years, but to continue in force till after notice of twelve months. (*Ib.* vol. VIII, p. 370.)*

(3) *The Treaty with Hanover, May* 20, 1840. Art. VII has the same article in substance, except the clause as to emigration, as the treaty with Prussia. It was to continue for twelve years and till twelve months after notice to terminate it. (*Ib.* vol. VIII, p. 556.) The same provision is in the treaty of June 10, 1846, Art. X. (*Ib.* IX, p. 865.)

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* See with regard to the two last treaties, the cases of the People *v.* Gerke, California Reports, Vol. V, p. 381, and that of Siamessan *v.* Bofer, *ib.* vol. VI, *ib.* p. 250, noticed on p. 46.)

(4 *Treaty with Würtemberg, April* 10, 1844.)

ARTICLE I.

Every kind of droit d'aubáine, droit de retraite, and droit de détraction, or tax on emigration, is, hereby, and shall remain abolished, between the two contracting parties, their States, citizens, and subjects respectively.

ARTICLE II.

Where, on the death of any person holding real property within the territories of one party, such real property would, by the laws of the land, descend on a citizen, subject of the other, were he not disqualified by alienage, such citizen or subject shall be allowed a term of two years to sell the same,—which term may be reasonably prolonged, according to circumstances,—and to withdraw the proceeds thereof, without molestation, and exempt from all duties of detraction.

ARTICLE III.

The citizens or subjects of each of the contracting parties shall have power to dispose of their personal property within the States of the other, by testament, donation or otherwise; and their heirs, legatees and donees, being citizens or subjects of the other contracting party, shall succeed to their said personal property, and may take possession thereof, either by themselves or by others acting for them, and dispose of the same at their pleasure, paying such duties only as the inhabitants of the country, where the said property lies, shall be liable to pay in like cases.*

ARTICLE IV.

In case of the absence of the heirs, the same care shall be taken, provisionally, of such real or personal property, as would be taken in a like case of property belonging to the natives of the country until the lawful owner, or the person who has a right to sell the same, according to Article II, may take measures to receive or dispose of the inheritance.

ARTICLE V.

If any dispute should arise between different claimants to the same inheritance, they shall be decided, in the last resort, according to the laws, and by the judges of the country where the property is situated.

ARTICLE VI.

All the stipulations of the present Convention shall be obligatory in respect to property already inherited or bequeathed, but not yet

* [See Frederickson *v.* State of Louisiana, Howard's Reports, vol. XXIII, p. 446.]

withdrawn from the country where the same is situated at the signature of this Convention. (*Ib.* vol. VIII, p. 588.)

(5) *The provisions in the Convention with Hesse-Cassel, March*, 26, 1844, Articles I, II, III, IV, V and VI, are the same as to real estate, as in the Convention with Wurtemberg. (*Ib.* vol. IX, p. 818.)

(6) The same is the case as to the Convention with Bavaria, January 21, 1845, Articles I, II, IV, V, VI.* (*Ib.* vol. IX, p. 826.)

(7) Articles I, III, IV, V, VI, of the Convention with Saxony, May 14, 1845, are also the same, but the privileges in Art. II, in favor of alien heirs, in the other treaties, are extended to devisees by the insertion of the words "or where such real property has been devised by last will and testament to such citizen or subject." (*Ib.* vol. IX, p. 831.)

(8) Convention with Nassau, May 28, 1846, Articles I, II, III, IV, V and VI, is also the same as the Wurtemberg treaty. (*Ib.* p. 849.)

(9) *The Treaty with Mecklenburg-Schwerin, December* 9, 1847, is declared to be an accession to the treaty of June 10, 1846, with Hanover, and has the same clause as that treaty. (*Ib.* vol. IX, p. 919.) There was also an accession to the treaty with Hanover by Oldenberg, March 10, 1847. (*Ib.* vol. IX, p. 868.)

(10) In the Convention with Brunswick-Luneberg, August 21, 1854 (*Ib.* vol. IX, p. 602), the phrase is, such time as the law of the country will permit for disposing of the real estate is accorded to those to whom such property would descend either by the laws of the country *or by testamentary disposition.*

V.

CONVENTIONS WITH SPAIN, THE SOUTH AMERICAN STATES, AUSTRIA, RUSSIA, SARDINIA, PORTUGAL, &C.

1 The treaty with Spain of October 27, 1795, Art. XI, confirmed by Art. XII, treaty of February 22, 1819, has the same stipulation as the Prussian treaty as to real estate, excluding the clause as to emigration. (United States Statutes at Large, Vol. VIII, pp. 144, 262.)

(1 *a*) *The Convention with Colombia, Oct.* 3, 1824, Article X, contains the following clause: "And if, in the case of real estate, the said heirs would be prevented from entering into the possession of the inheritance, on account of their character as aliens, there shall be

* By Art. III of the original treaty, &c., "the citizens or subjects of each of the contracting parties shall have power to dispose of their (real and) personal property within the States of the other," &c., and "their heirs, &c., shall succeed to their said (real and) personal property." A note to the treaty, as published in the Statutes, says, "The words in parenthesis in the original treaty encircled in red." These words were stricken out by the Senate. (See Lawrence's Wheaton, ed. 1863, p. 167.)

granted to them the term of three years to dispose of the same, as they may think proper, and to withdraw the proceeds without molestation, and exempt from all rights of detraction on the part of the government of the respective States." This treaty was by its terms, Art. XXXI, for twelve years in all the parts relating to commerce and navigation; and in all those parts which relate to peace and friendship, it shall be, it is declared, permanently and perpetually binding. (*Ib.* vol. VIII, p. 310.) See Treaty with New Granada, Dec. 12, 1846, *infra.*

(2) *The same provision as to real estate is inserted in the Treaty with Central America of Dec.* 25, 1825 (*ib.* p. 326, and in the treaty with Brazil, Dec. 12, 1828, p. 392). The Mexican treaty of April 5, 1831, Art. XIII, only applies to the succession of personal property. (*Ib.* p. 414.)

(3) *The Treaty with Austria, Aug.* 27, 1829, Art. XI, is confined to personal property. (*Ib.* vol. VIII, p. 401.)

But the treaty with Austria of May 8, 1848, Art. II, provides: "Where, on the death of any person holding real property, or property not personal, within the territories of one party, such real property would, by the laws of the land, descend on a citizen or subject of the other, were he not disqualified by the laws of the country where such real property is situated, such citizen or subject shall be allowed a term of two years to sell the same; which term may be reasonably prolonged, according to circumstances, and to withdraw the proceeds thereof, without molestation, and exempt from any other charges than those which may be imposed in like cases upon the inhabitants of the country from which such proceeds may be withdrawn." The treaty was made for two years, but to continue until after a notice of one year. (U. S. S. vol. IX, p. 944.)

The Austro-Hungarian Convention of July 11, 1870, contains no provision on this subject.

(4) *Convention with Chili, July* 4, 1831, Art. IX, p. 436, has the same clause as to real estate as that of Colombia, &c.

(5) *Russia.* The following is the clause as to real estate in the treaty Dec. 6–18, 1832, with Russia: "And where, on the death of any person holding real estate, within the territories of one of the high contracting parties, such real estate would, by the laws of the land, descend on a citizen or subject of the other party, who by reason of alienage may be incapable of holding it, he shall be allowed the time fixed by

the laws of the country, and in case the laws of the country actually in force may not have fixed any such time, he shall then be allowed a reasonable time to sell such real estate, and to withdraw and export the proceeds without molestation and without paying to the profit of the respective governments any other dues than those to which the inhabitants of the country wherein said real estate is situated shall be subject to pay, in like cases. But this article shall not derogate, in any manner, from the force of the laws already published, or which may hereafter be published by His Majesty, the emperor of all the Russias, to prevent the emigration of his subjects. (*Ib.* p. 450.)

(6) *In the Treaty of Jan.* 20, 1836, *with Venezuela*, Art. XII, is the same clause as in the treaty with Colombia. (*Ib.* p. 472.)

But in the treaty of Aug. 27, 1860, Art. V, the provision as to real estate is thus phrased: "When, on the decease of any person holding real estate within the territory of one party, such real estate would, by the law of the land, descend on a citizen of the other were he not disqualified by alienage, the longest term which the laws of the country in which it is situated will permit shall be accorded to him to dispose of the same; nor shall he be subjected in doing so to higher or other dues than if he were a citizen of the country wherein such real estate is situated. (United States Treaties, Vol. XII, p. 1146.)

(7) The convention, Nov. 13, 1836, with Peru-Bolivia, is the same as that of Colombia. (United States Statutes at Large, vol. VIII, p. 489.)

(8) *In the Treaty, Nov.* 26, 1838, *Art. XVIII, with Sardinia*, the clause as to real estate is: "And where on the death of any person holding real estate within the territories of one of the contracting parties such real estate would, by the laws of the land, descend on a citizen or subject of the other party, who, by reason of alienage, may be incapable of holding it, he shall be allowed a reasonable time to sell such real estate, and to withdraw and export the proceeds without molestation, and without paying to the profit of the respective governments any other dues, taxes, or charges than those to which the inhabitants of the country wherein said real estate is situated shall be subject to pay in like cases. (United States Statutes at Large, vol. VIII, p. 520.)

(9) *The clause in Treaty, June* 13, 1839, *with Ecuador*, Art. XII, as to real estate, is the same as in the convention with Colombia. (*Ib.* 538.)

(10) *The Treaty with Portugal, August* 26, 1840, Art. XII, p. 566, is the same as that with Russia, excluding the last clause of the Russian article, respecting emigration.

(11) *The Treaty of Dec.* 1, 1845, *with the Two Sicilies,* Art. VI, is limited to the disposition of the personal property and contains no clause as to the real. (United States Statutes, vol. IX, p. 836.)

A subsequent treaty of Oct. 1, 1855, Art. VII, is as follows: "As to any citizen or subject of the high contracting parties dying within the jurisdiction of the other, his heirs being citizens or subjects of the other shall succeed to his personal property and either to his real estate or to the proceeds thereof whether by testament or *ab intestato;* and may take possession thereof, either by themselves or by others acting for them; and may dispose of the same at will, paying to the profit of the respective governments such dues only as the inhabitants of the country, wherein the said property is, shall be subject to pay in like cases." (United States Statues at Large, vol. XI, p. 644.)

(12) *The Treaty with New Granada, Dec.* 12, 1846, Art. XII, declares: "The citizens of each of the contracting parties shall have power to dispose of their personal goods or real estate within the jurisdiction of the other, by sale, donation, testament or otherwise; and their representatives, being citizens of the other party, shall succeed to their said personal goods or real estate, whether by testament or *ab intestato*, and they may take possession thereof, either by themselves or others acting for them, and dispose of the same at their will, paying such dues only as the inhabitants of the country, wherein said goods are, shall be subject to pay in like cases." (United States Statutes at Large, vol. IX, p. 886.)

Art. XXXV, sec. 2.—The present treaty shall remain in full force and vigor for the term of *twenty* years from the exchange of the ratifications; and from the same day the treaty that was concluded between the United States and Colombia, on the 3d of October, 1824, shall cease to have effect, notwithstanding what was disposed in the first part of the XXXIst Article. (*Vide supra*, p. 115.)

The Consular Convention of May 4th, 1850, makes provision in respect to consuls taking possession of the effects of persons dying, but makes no reference to real estate. (*Ib.* vol. X, p. 904.)

(13) *The Treaty with the Swiss Confederation, May* 18, 1847.—Art. II is: "If, by the death of a person owning real property in the territory of one of the high contracting parties, such property should

descend, either by the laws of the country, or by testamentary disposition, to a citizen of the other party, who on account of his being an alien, could not be permitted to retain the actual possession of such property, a term of not less than three years shall be allowed to him to dispose of such property, and collect and withdraw the proceeds thereof, without paying to the government any other charges than those which, in a similar case, would be paid by an inhabitant of the country in which such real property may be situated." (United States Statutes at Large, vol. IX, p. 903.)

The article in the Convention of Nov. 25, 1850, is as follows: "But in case real estate situated within the territories of one of the contracting parties should fall to a citizen of the other party, who, on account of his being an alien, could not be permitted to hold such property in the State, or in the canton in which it may be situated, there shall be accorded to the said heir, or other successor, such term as the laws of the State or canton will permit to sell such property; he shall be at liberty at all times to withdraw and export the proceeds thereof without difficulty, and without paying to the government any other charges than those which, in a similar case, would be paid by an inhabitant of the country in which the real estate may be situated." (United States Statutes at Large, vol. XI, p. 590.)

(14) *The Treaty with the Hawaiian Government, Dec.* 20, 1849, Art. VIII, has the same clause as the Prussian treaty, except as regards emigration. (United States Statutes at Large, vol. IX, p. 979.)

(15) *The Treaty with Guatemala, March* 3, 1849, Art. XI, has the same clause as that in the convention with Colombia and other South American States. (United States Statutes at Large, vol. X, p. 878.)

(16) *The Treaty with San Salvador, concluded Jan.* 2, 1850, Art. XII, is the same as the treaty with New Granada, Art. XII. (United States Statutes at Large, vol. X, p. 893).

(17) The provision as to the succession and disposition of property in the *treaty with Costa Rica, July* 10, 1851, is confined to personal property. (United States Statutes at Large, vol. X, p. 918.)

(18) *The Treaty with Peru, July* 26, 1851, Art. XV, contains the following clause: "Should the property consist of real estate, and the heirs, on account of their character as aliens, be prevented from entering into possession of the inheritance, they shall be allowed the

term of three years to dispose of the same and withdraw and export the proceeds, which they may do without paying any other dues or charges than those which are established by the laws of the country." (United States Statutes at Large, vol. X, p. 933.)

(19) *The Treaty with the Argentine Confederation, July* 27, 1853, Art. IX, contains the following clause: "In whatever relates to the police of the ports, the lading and unlading of ships, the safety of the merchandise, goods, and effects, and to the acquiring and disposing of *property of every sort and denomination*, either by sale, donation, exchange, testament, or in any other manner whatsoever, as also to the administration of justice, the citizens of the two contracting parties shall reciprocally enjoy the same privileges, liberties, and rights, as native citizens." (United States Statutes at Large, vol. X, p. 1009.)

(20) *The Treaty with Bolivia, May* 13, 1858, Art. XII, provides: "And if, in the case of real estate, the said heirs would be prevented from entering into the possession of the inheritance on account of their character of aliens, there shall be granted to them the longest period allowed by the law to dispose of the same as they may think proper, and to withdraw the proceeds without molestation, nor any other charges than those which are imposed by the laws of the country. (United States Treaties, 1860–3, p. 298.)

(21) *The Treaty with Nicaragua, June* 21, 1867, United States Statutes at Large, vol. XV, p. 554, besides providing Art. VIII, in case of real estate falling to a citizen of the other party, who, on account of his being an alien, could not be permitted to hold such property, there shall be accorded "to the said heir or other successor," such time as the laws of the State will permit to sell such property, stipulated by Article IX, that "the citizens of the United States residing in Nicaragua, or the citizens of Nicaragua residing in the United States, may intermarry with the natives of the country, hold and possess by purchase, marriage, or descent, any estate, real or personal, without thereby changing their national character, subject to the laws which now exist or may be enacted in this respect.

APPENDIX B.

(*From the London Law Magazine, May*, 1870.)

ART. V.—THE MARRIAGE LAWS OF VARIOUS COUNTRIES, AS AFFECTING THE PROPERTY OF MARRIED WOMEN.*

BY THE HON. W. BEACH LAWRENCE.

MARRIAGE, according to Grotius and Blackstone, was always a matter *juris gentium*, and with the intercourse now existing between the different portions of the civilized world, and especially between the people of a common descent on the two sides of the Atlantic, every incident connected with it is of general interest. And no citizen of any country marrying abroad or coming to reside abroad after marriage can well know to what extent the laws of other countries on this subject may not be applicable to him.

Important, however, as the protection of the rights of property of married women is, the questions which concern her matrimonial status are of paramount consideration. Marriage, though a contract, is a contract *sui generis*, and among its peculiarities is that it is impossible by rescinding it, after it has been once consummated, to restore one of the parties to the condition which existed before the contract was entered into. The Common Law of Europe, and which is still the law of Scotland, by regarding every promise of marriage made between persons of the age of puberty, followed by consummation, as constituting an irrevocable contract, protected the feebler sex against the stronger, and was the ægis of woman's honor.

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* The above is an authentic report of the speech made by Mr. Lawrence, in the discussion on the Married Women's Property Bill, at the Bristol Congress of the Social Science Association in October last. The speech has not been reported elsewhere. (Ed. Law. Mag.)

The decision rendered by your House of Lords in 1843, declaring the presence of a person ordained by a bishop to have been essential by the Common Law of England to the validity of a marriage, it is unnecessary to say, created the most profound amazement in the United States. As our law of marriage has no other basis than the law of England as it existed before the time of Lord Hardwicke's Act, if the interposition of a clergyman ordained by a bishop was necessary with you, it could not, in the absence of any statutory regulations, have been less obligatory with us.

It is unnecessary, however, to inquire as to the soundness of the decision in the Queen *v.* Millis, rendered by a divided vote of the House of Lords, and against which the eminent judge of the Ecclesiastical Court, Dr. Lushington, on the earliest occasion, so earnestly protested. Neither the necessity of the solemnization by a priest, as contended for by the English Common Law judges, nor the decree of the Council of Trent requiring the presence of the curate and two witnesses to the verification of a marriage between Catholics, impose any additional restrictions on the parties in the contracting of marriage. On the contrary, the Council of Trent, whose professed object it was to establish a system which would prevent for the future scandals arising from the repudiation, by persons belonging to the Church, of clandestine marriages of which the proofs were wanting, refused to declare invalid marriages contracted without the ecclesiastical benediction. At the same time they anathematized all who should say that the marriage of children without the consent of their parents was null.

Constituted as human nature is, every restriction on marriage must operate to induce illicit connections, and such connections, as a general rule, must be based on a sacrifice of the middle and lower classes to the licentiousness of the higher. As it was well expressed by Sir James Mackintosh, the whole legislation of Europe on the subject of marriage has been a contest of patrimony against matrimony, though, viewed in this light, it is not a little extraordinary that the authors of the Code Napoleon, who had just proclaimed the equality of all citizens, should have referred as an authority for their articles on marriage to the edict of Henry II, of 1556, and to the ordinance of Louis XIII, which were professedly intended to prevent *mésalliances*. If the object of the Code had been to make lawful marriage an exceptional institution and concubinage the normal rule, no more effective enactments could well have been devised than the restrictions which it im-

poses. The provisions of the Roman law as to parental authority are exaggerated, and while the criminal condemned to the "*travaux forces*" is deprived of all other civil rights, he retains an absolute veto over the marriage of his children to an age beyond that of legal majority for other purposes, and is entitled to "*actes respectueux*" from them at every age, the absence of which would expose the marriage to be nullified, and which in any event create unjustifiable delay.

The rule early introduced into Germany, which prohibited marriages of members of sovereign houses even with the higher nobility, extended, till modified by the improved legislation of the new confederacy, to all intermarriages between different classes of the community. The laws of many of the German States, more just than the French Code, seem to have contemplated the natural result of a system which imposed innumerable artificial impediments to marriage, and in the Codes of Prussia and Saxony the "*Verlobniss*" forms a separate chapter. Though such connections were terminable without legal proceedings, provision is made for the legitimacy of the children born under them, and in Prussia there is a complete Code respecting what the "*Allgemeines Landrecht*" terms marriages of the left hand.

In England legislation against *mesalliances* only goes back about a century. It dates from Lord Hardwicke's Act, as it was called, passed in 1753. For a long time previous, almost every year, bills to prevent clandestine marriages, that is to say, to protect the aristocracy against the improvident marriages of their prodigal heirs, passed the House of Lords but failed in the Commons. Lord Hardwicke's Act not only prohibited any suit before an Ecclesiastical Court to compel the celebration *in facie ecclesiæ* of a marriage contracted either *per verba de presenti* or *per verba de futuro*, but the rule as to the consent of parents, which the Canon Law had never required, was rigorously applied. Moreover, an omission of the minutest forms was utterly fatal. Unlike the French judges, who are vested with discretionary power in the case of the omission of the preliminary requirements of the Code to look at the motives, whether the object was clandestinity, or the omission of the formalities was accidental, the reports of the English Courts will show cases where marriages, which had lasted twenty-five years, and in one case nearly forty, were annulled after the birth of children, for omissions in the formalities prescribed for obtaining a license, though the license itself was perfectly regular, and no suggestion of clandestinity existed. In several cases the judges expressed their regret in being compelled to adjudicate according to the letter of

the law, nor was it till 1822 that Lord Hardwicke's Act received any modification. Many of ihe most stringent provisions of that law no longer exist, but under the Acts of 4 Geo. IV. c. 76 (1823), & 6 and 7 Will. IV. c. 85 (1836), which constitute the present marriage laws of England, though a marriage is not invalid because a license is issued under a wrong name, any mistake of name, however slight, renders void a marriage celebrated after the publication of banns.

It is said, in the report of the Royal Commission made last year, that in all these forms of English marriages, the marriage may be invalidated by a non-compliance with any of the requirements of the law. For instance, if the place where the marriage is celebrated is not properly consecrated or set apart, or if the marriage is effected in some other locality than where the banns have been called, or if any other error affecting time or place is made by the parties, that entirely invalidates the marriage, although, upon other grounds, there may be no objections whatever to it.

I will not dilate further on what may be deemed only matter introductory to the subject of the present discussion. Accustomed to the jurisprudence of a country where no formal ceremony, civil or religious, is requisite to constitute a valid marriage, and every intendment is made in favor of legitimacy, it is difficult for me to comprehend a system of legislation which, for the mere object, moreover usually ineffectual, of preventing improvident marriages of spendthrift heirs, would sacrifice female virtue to family pride. It was, indeed, with no little astonishment that I read the following remarks, made in a debate of the House of Commons during the last session of Parliament: "Suppose," it was said, "any gentleman in this House visited at a house in Scotland where a young lady happened to be staying and that he and the young lady took a walk together, and, in the course of the walk, he took a piece of paper out of his pocket, on which they wrote down a mutual promise to marry, though the piece of paper might be simply put back again into his pocket, and though nobody might be there at the time, and if the persons afterwards lived in a certain way together, that would be a valid marriage, although nobody might know of the fact of the marriage for years afterwards." It seems to me that, so far from this statement aiding the cause for which it was intended, it conclusively establishes the propriety of the Scotch law of marriage. I am very sure that there is no tribunal in my country that would not, under the facts as stated, pronounce the sentence of a valid marriage; nor is there a legislature in any State

of America which would enact such a system of marriage laws as would enable the parties, if they desired it, to escape from the relation thus contracted, whether or not it was evidenced either by a priest or civil officer.

Having alluded to the English law of marriage, I ought not to leave this branch of my subject without referring to the recommendations of the Royal Commission. Though, for the reasons incidentally suggested, I cannot but think that the rights of the weaker sex require the return, pure and simple, to the old common law, very much I believe would be gained by providing, as is proposed, that no marriage celebrated by a minister of religion duly authorized, or by a civil officer, shall be declared void, for a non-observance of the conditions prescribed for the prevention of clandestine, illegal marriages; and that the preliminary conditions relative to residence, consent of parents, declarations required from the parties, shall only be directory.

Where marriages take place in foreign countries, and especially between persons of different nationalities, important questions of international law present themselves, about which the jurisprudence of England and America is not in accordance with that of the continent. While all agree that the law of the place of celebration must be observed, the French and other countries, where the rule of the personal status prevails, subject their citizens to their own laws, when contracting marriage abroad. Frenchmen, who have not lost their nationality, have two conditions to perform: they must make the publications in their *commune*, and obtain the consent of their parents. Neither the English nor American laws pays any regard to these exterritorial requirements; and the consequence is, that cases exist where parties have been validly married in England or the United States, whose marriages are deemed null in their own country.

The impediments thrown in the way of marriages abroad have induced the passage of Acts of Parliament, authorizing marriages at embassies and consulates, the validity of which, as derogating from the sovereignty of the country where they are solemnized, is considered by the Royal Commission as doubtful.* It would seem that

* [The marriages at foreign legations were emphatically repudiated by Mr. Cass when Secretary of State, in an instruction of November 12, 1860. "It has been remarked," he says, that this power is a consequence of exterritoriality. But while this principle of exemption from the government of the country, where a

this is a matter which requires a conventional arrangement, and so far as the United States and England are respectively concerned, it naturally falls within the scope of legislation required by the arrangements recently entered into by them, in regard to naturalization and its incidents.

Though publicists are pretty generally agreed that it is the law of the husband's domicile or the matrimonial domicile, and not the law of the place of the celebration of the marriage, which, in the absence of any express contract, is to govern the respective rights of the parties, at least as to personal property, there is no general accordance between them as to the effect of a change of domicile after marriage.

In Story's time, it would appear that no case had arisen in the English courts upon the point, as to what rule ought to govern in cases of matrimonial property where there is no express nuptial contract, and there had been a change of domicile. He refers to a case (Sawer *v.* Shute, 1 Anstr. 63) where the Court of Chancery adopted the law of the actual domicile, though to the prejudice of the equitable provision which that tribunal was in the habit of making in favor of married women domiciled in England.

The actual domicile is the law of Louisiana now confirmed by statute, as to all property acquired after removal into the State. And Judge Redfield, the commentator of Story, contends for it as the suitable rule in all cases. He admits, however, that the Court of Appeals of New York, by a divided vote, had decided otherwise, holding that the rights of property between married persons continue to be governed, notwithstanding a change of domicile, by the law of the place where the marriage was celebrated, and which was also at the time the

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foreign minister is accredited, protects his person and his domicile from all interruption, I do not consider that it necessarily carries with it the power to exercise any authority, civil or criminal. I do not consider that an obligation contracted at the residence of the Minister of the United States, at Paris, contrary to the laws of France, can become valid, when the parties are found in the United States. The utmost extent to which this principle of exterritoriality can properly be carried, cannot confer upon a foreign minister an authority not necessarily incident to his official functions, or which is not granted to him by some law of his own country." (Lawrence's Wheaton, p. 399, note 133.) Mr. Cass' instruction, as given above, is also inserted substantially in the spurious edition of Wheaton, by Dana, p. 303, note 128. See also, on this subject, Lawrence's *Etude de droit international sur le mariage*, pp. 82–83; Article in the American Law Review, January, 1860, vol. II, pp. 218, &c., by Merrill.]

place of the domicile of the husband. This is in accordance with the French rule.

There are two systems of law applicable, on the continent of Europe, to the rights of married persons, in neither of which is the individuality of the wife suppressed, as by the English Common Law, and though in many cases the husband exercises the administration during marriage, the wife's rights of property under one form or other are retained, and the law affords her protection against the improvidence of the husband.

On the continent, where the question of woman's right to property arises, it is necessary to decide between the dotal *regime*, which is sometimes purely Roman, and sometimes undergoes very extensive modifications, and the community of goods which is of German origin, and which also exists under various forms. Nowhere are these systems obligatory, except in the absence of express contracts, which in some countries may be made even after marriage. The right to such marriage contracts is entirely in accordance with the express terms of the law, and not, as in England and America, in apparent evasion of it.

By the Roman law, on which the modern dotal system is founded, the husband had the sole management of the dowry given by the father to a daughter on the occasion of her marriage, but, as a general rule, the husband's right to it ceased at the dissolution of the marriage, and it was restored to the wife or her family. Moreover, the constitution of a dowry was in no wise essential to the validity of the marriage, and all the property not comprehended in the dowry was paraphernal, of which the wife remained proprietor and over which the husband possessed no rights. By the French law there is the most entire liberty of arranging the interests of the parties by contract, subject only to the condition that it shall not interfere with the general policy of France, and particularly as respects the law of succession. No provision can be made favoring primogeniture or affecting the equality of descent among children. Not only may special stipulations be made, but the parties may in general declare whether they will marry under the law of community, the law of dowry (the general features of which, as they existed in the Roman law, we have described), or the law of separation of property, the Code providing the consequences to result from the adoption of any one of these systems.

Nor is it necessary to adopt one of them in its entirety, but they

may be modified or blended to suit the views of the parties. In the absence, however, of any declaration, the law of community, which may therefore be deemed the Common Law of France, governs. "Under this law, the husband and wife become joint owners of all the personal property which they possess at the time of the marriage, as well as of all such property as they may acquire during the marriage, by succession, or even by gift, unless the donor express the contrary. They are also joint owners of all the real property purchased during the marriage; but such real property as is acquired by succession or gift, unless the donor declares otherwise, does not fall into the community. The husband has the sole management of the property of the community, and may sell or charge it without the concurrence of the wife; he has also the management of all the property of the wife which is excluded from the community, but he cannot alienate such of her real property as is excluded, without her consent; nor can he alienate by will the property that is included, beyond the share of it to which he will be entitled on the dissolution of the community. At the death of either of the parties, an account is taken of the properties and of the liabilities of the community, and the surplus is divided equally between the survivor and the representatives of the deceased."

Under the dotal system, "the husband has, during the marriage, the management of all the property in dowry, but he cannot, either alone or conjointly with the wife, alienate or charge any of the real property, unless provision has been made for this purpose in the marriage contract. The wife may, however, under certain conditions, make provisions thereout for the children of the marriage, or of a former marriage, and the Court will also permit the property in dowry to be sold, in certain cases, such as for releasing the husband from prison, &c. The wife has the management and enjoyment of such part of her property as has not been settled in dowry, but she cannot alienate nor sue, in respect to this property, without the consent of her husband; or, in the event of his refusal, without the permission of the Court."

Where the parties stipulate by their marriage contract that they will be separate in property, the wife retains the entire management and enjoyment of her property, both real and personal. Each of the parties contribute towards the expenses according to the terms of the contract; if it is silent in this respect, the wife contributes a third of her income, though the Court may, in certain cases, order a larger contribution. The wife cannot, by virtue of any stipulation, alienate

her real property without the special consent of her husband, or of the Court, in case of his refusal; and any general authority for this purpose given to the wife, either by the marriage contract or subsequently, is void. The community may be confined to mere gains, leaving each party his own property, or there may be universal community which will include real estate as well as personal. The mere declaration that the parties marry without community does not constitute the separation of property, so called, in which last case, as we have seen, the wife has the separate control of her property in all respects, except that she cannot dispose of any real estate without her husband's consent. In a marriage declared to be without community, the wife has not the right of administering her property, or receiving the income, which goes to the husband to support the expenses of the marriage; the husband retains the administration of the property, movable and immovable, during his life, with the right of receiving all the personal property brought as her *dot*, or which accrues to her during marriage, subject to the restoration after the dissolution of the marriage or judgment of separation of goods.

In the Spanish law the community is confined to the acquests, and each party retains his or her own property, and is liable for his or her own debts. However, where there is no inventory made at the time of the marriage, and there is no other means of distinguishing what belongs to each party, the movables are considered as acquests, and subject to the rule of the community. If under the Spanish law the woman renounces the community before the celebration of the marriage, she is married under a rule equivalent to the rule of the separation of property and not of the French *regime* without community. The Spanish jurisprudence admits of a system similar to the French *regime* without community, *i. e.*, a *regime* in which the wife has neither the advantages of community, nor those of the separation of property. But for this purpose it is requisite that such a *regime* be expressly stipulated in the marriage contract. The following are its consequences upon property. The wife has no share in the acquests, neither has she the administration of her separate property, whilst in the absence of such stipulation she would retain that administration, as in the French system of separation of property.

The wife's dowry may be given her either by her parents or by third parties, and either before or during coverture. Parents are bound to furnish a dowry equal to the "*legitime*" (the portion the party would by law be entitled to in the parents' fortune in case of

succession), deducting therefrom the property the bride may possess in her own right. The obligation does not exist if she marries without their consent. All the property the wife acquires during coverture as gift, legacy or succession, is joined to the dowry. The husband is the responsible usufructuary of the dowry. He has the administration of all personal property, but he has to give legal security for its value. Neither the husband, nor wife, nor the two acting together, can charge or mortgage the real estate forming part of the dowry, unless by authorization of a tribunal, and jointly. The husband is bound to supply the deficiency created thereby in the dowry as soon as he is able to do so.

The new Italian Code differs essentially from that of France on this subject. It has established two *regimes*, the dotal and that of the community. They are both conventional, and there does not exist any legal *regime*. In the silence of the parties, the law does not assume the adoption of either. If there is no special contract of marriage, or if the contract does not adopt either the dotal *regime* or that of the community, the property of the wife is governed by the paraphernal rule, which is identical with the French rule of separate property, except that the Italian law declares that the parties shall contribute to the household charges in proportion to their respective fortunes, while in the French law the woman contributes one-third.

The Common Law of Germany, as well as the Codes of Prussia and of Saxony, fully recognizes the free right of the parties to make what contracts of marriage they please, with the same restrictions as those imposed by the French Code, of not interfering with the State policy, and these nuptial contracts may be made as well during the marriage as before. The parties may, by their contract, dispose reciprocally in favor of each other of any portion of their successions, saving the reserved rights of heirs, and these dispositions are irrevocable. They may, contrary to what the French Code permits, declare their marriage to be according to any of the local laws, customs, or statutes. The dotal *regime* has prevailed in the greater part of Germany, and is that of the Austrian Code, as it is also of the Bavarian. But the principle of community is the law in a great part of what constitutes the Prussian States.

The legal community varies in the different countries where the law of the community prevails. It is universal and comprehends all the property, real and personal, in many of the States. All the laws accord to the widow, as long as she does not marry, certain rights

in the property of her husband, either for her life or in full property. The wife may alienate her real estate without the special consent of her hushand, unless the local law subjects her to marital authority. The dotal character of the property belonging to the wife is not presumed. The husband must prove that the dotal property is not paraphernal. If the *dot* is in danger, the wife may claim against third parties the restitution. The wife or her heirs have a general mortgage upon the property of the husband for the restoration of the *dot*, and they have a legal mortgage upon the property of the husband for the restoration of the paraphernal property.

In Prussia, by marriage the administration of the property of the wife is confided to the husband, except so far as it is reserved to her by the law or by matrimonial conventions. What property each party contributes towards the expenses of the establishment is under the administration of the husband, but in the property reserved to the wife is included everything that relates to her personal use, the nuptial gift (*morgengabe*) and whatever is embraced therein, and she has the administration, usufruct, and free disposition of her reserved fortune. The savings made by a married woman from her reserved fortune belong to her. The immovables and capital inscribed in her name and which she has acquired from an industry separate from that of her husband, form a part of the general contribution (*apport*), unless she carries on a commerce exclusively with her reserved means, and there is a stipulation to the contrary. The authorization of the husband for her to sue in a court of justice, when the matter relates to her reserved fortune, is unnecessary. The husband exercises all the rights and duties of a life owner over the property of the wife not reserved, but he cannot alienate it or charge it, nor dispose of the capital inscribed in her name, without the consent of the wife. But there are cases—as those of indispensable repairs—where the tribunals will interpose if the wife refuses. The husband has the disposal of the personal property set apart for the maintenance of the family, but he cannot dispose of the reserved personal property. The wife cannot take away from the husband the administration of her portion of the property set apart for the common support, unless she provides for his support and that of the children in a manner conformable to their condition. When the debts of the wife were made before marriage, her creditors can pursue their claims against her person and all her property, but if these debts have been concealed from the husband, and reduce the contribution for the

common support, he may have recourse to her reserved fortune. Community of goods does not exist among the parties, except when established by provincial law. The parties may at all times make mutual contracts of inheritance respecting their successions, and revoke them, but the wife must in this case be assisted by counsel. The dower consists of a pension allowed to the wife by the husband for her support during her widowhood. The wife has a right to the personal property belonging to the household establishment, which includes her outfit entire, the furniture for ordinary use, provisions, &c. The half of the hereditary portion, fixed by the law, to the surviving husband or wife, is regarded in the same light as the shares of the heirs, &c., and subjected to the same rules. Before the division of the property of the husband or wife, the survivor resumes possession of his or her own property.

In Saxony, the general rule, where there is no contract, is that the husband has the usufruct and administration over the fortune which the wife possesses at the conclusion of the marriage, or acquires during marriage. He is responsible for fraud or negligence. There are provisions respecting the *dot*, which is the aggregate of what is given or promised by parents or third parties, as the portion to be applied on behalf of the wife to the common support of the family. There is an obligation on the part of the parents to furnish to the future wife a portion conformable to their fortune, and to the position of the husband. The obligation to furnish a *dot*, however, does not exist if the daughter has a sufficient fortune of her own, or if she marries without consent. With respect to what the wife acquires for services, which have no reference to the affairs of the family or to her husband's position, she has the property of it, but the husband has the administration and use. If the wife has given such acquests to the husband to be employed for the purposes of the family, or has herself employed them in that way, she cannot, after the dissolution of the marriage, reclaim them. In order to be valid against a third party, the usufructuary title of the husband need not be registered. If the property of the wife is delivered to the husband with a statement of its value, he is responsible for it, and must replace it according to the indicated value. Neither of the parties is obliged to fulfil, out of his own property, the engagements of the other. All the engagements of the wife validly contracted before or during marriage, must be discharged out of her own fortune, though it is only in certain cases that her reserved fortune is liable for those contracted during marriage. In case, by a

bad administration, the husband puts in danger the fortune contributed by the wife for the common support, she may ask that the administration be given to her; and, in case of bankruptcy, the wife may reclaim her fortune according to the inventory. The right of the husband to the administration and use of the fortune, which the wife brings to the common support of the family, expires with the dissolution of the marriage. The husband is required, immediately after the dissolution of the marriage, to restore, according to the regulations regarding the usufruct, the fortune which the wife had brought to the marriage. Contracts, by which the consequences resulting from marriage are determined or changed, may be made before or during marriage. If the wife has reserved, with the consent of the husband, the free disposition of her fortune or of a part of it, or if a third party, who has given a fortune to the wife, has decided that the wife shall have the free disposition of it, the wife may, in the absence of any other clause, dispose, without the co-operation of the husband, of the property thus reserved, administer it, and use it in any way for her own purposes. If the husband and wife agree to admit the general community of the goods, all the fortune which they both possessed at the conclusion of the marriage, or which has been acquired since, becomes, if no other stipulation exists, common, without any other form, from the time of the conclusion of the contract; and if the contract was concluded before the marriage, from the time of the marriage. The mere acceptance of the community of property confers a right to the inscription in the registers of landed estate or of mortgages of the things and rights, the acquisition of which ordinarily requires such an inscription.

The Austrian Code of 1811 is one of the best systems of jurisprudence in Europe. It applied, till the recent legislative separation of Hungary from the Cis-Leithan provinces, to the whole empire. The regulations as to the obligations of the parents to furnish a *dot* are similar to those of the Saxon Code. The dower or nuptial gift is what the husband or a third party gives to a bride as a supplement to the *dot*. She has not the enjoyment of it during marriage, and only acquires the property in case she survives her husband. No dowry in the nature of a wife's *dot* is due to the wife, but as the future wife has a right to a *dot* upon the fortune of her parents, so the parents of the future husband ought to provide him an establishment proportionate to their fortune. The *morgengabe* is the present which the future husband promises to give to his wife the morrow of the marriage.

When it has been stipulated, it is presumed, in case of doubt, that it has been given within the three first years of the marriage. The marriage does not of itself establish a community of goods between the husband and wife. It should be stipulated by contract; the form and extent are determined by the Code. In default of express stipulation, each of the married parties preserve their rights of property and of the increase of the acquests during marriage. There is no community between the parties. The husband is presumed to be the administrator of the property of the wife, if she makes no objection. The husband is in this respect considered as the responsible mandatory of the fund or capital only; but he is not required to render an account of the income received during marriage. Unless there are stipulations to the contrary, his accounts are considered to be liquidated to the day when his administration ceases. The administration of the wife's fortune may, in case of danger for the *dot*, be taken from the husband, even although it had been granted to him by express contract. The widow is entitled to a dower from the time of the death of the husband, which should be paid to her quarterly, in advance. The widow who marries again loses her dower. The validity or nullity of gifts between the husband and wife are regulated by the general rules relating to gifts (donations). The husband and wife may make dispositions in favor of heirs, or make themselves mutually heirs to one another. They may conclude an agreement respecting the succession by which they reciprocally promise and accept the gift of their fortune. To these agreements respecting succession between husband and wife the dispositions relative to contracts in general are applicable. Many of the provisions of the Code apply to the dissolution of marriage by divorce.

I have given a reference to some of the provisions of the laws of the principal states of the continent as to married women's property, to show that the English and American system, based on the merging of the existence of the wife in that of the husband, is altogether exceptional. And in this connection it cannot fail to be noted, that whatever are the rights of the parties independent of contract, and whatever may be their capacity to contract, it is openly avowed in the law itself, the duty of the judges being to expound the law provided for them by the legislature, and not to exercise their ingenuity to evade it. In modern times the separation of the executive judiciary and legislature has been in all constitutional governments deemed essential to the security of persons and property. To what extent the usurpations of Courts of Equity have been carried in the adoption of

a system at direct variance with the Common Law, was fully explained in the testimony given before the committee of the House of Commons by Mr. Westlake and Mr. Hastings.*

* [The state of the English law in reference to the property of married women, is taken from a report of the Select Committee of the House of Commons in 1868, p. 3.

The Courts of Common Law and the Courts of Equity administer two distinct systems of law with reference to this subject, and are guided by entirely different principles. In the Common Law Courts the married woman is not, in respect of property, recognized as having a legal existence independent of her husband. In contemplation of law the husband and wife are one person, and that person is the husband. The wife is incapable of contracting, and of suing and being sued. Her property at marriage vests in her husband, or passes under his control and management during their joint lives. As regards her real estate, the husband cannot sell it without her consent, and after his death it survives to her or her heirs, but pending their joint lives the husband can deal with the income as he pleases, and dispose of his interest without her consent and without making provision for her. Her personal property at marriage vests absolutely in her husband. Her household property is equally at his disposal, but if he does not dispose of it during his life, it reverts to the wife surviving him. In either case the husband may dispose of such property without making any provision for the future maintenance of the wife or children. Her earnings are equally at his disposal.

The Courts of Equity have, on the other hand, been occupied from a very early period in elaborating a system under which the wife may, by ante-nuptial arrangement, escape from the severity of the Common Law. They began by recognizing the separate existence of the wife, inventing a process by which, through the medium of trustees, a separate property could be secured to the wife free from the control of her husband; in respect of this separate property they subsequently recognized that she could enjoy all the incidents of property, could contract, and be made liable on her contracts, and indirectly sue and be sued in equity. A further step was made when they held that a husband could be a trustee for his wife, and could be called to account on her behalf. Later, with a view to a better protection of the wife, and to prevent her suffering from her own imprudence or from the undue influence of her husband, they invented a process by which the wife could be restrained from anticipating the income of her separate property. They also devised means by which, even after marriage, where the wife becomes entitled to property as next of kin or by will, and the same would otherwise go to the husband, a portion may be claimed on behalf of the wife and her children for a settlement, to secure her against the misfortune or improvidence of her husband. At first they acknowledged this equity to a settlement only in cases where the husband had to seek the intervention of the courts on his own behalf, and where, in return for their assistance, they felt themselves in a position to insist upon his acting equitably on his part; but they subsequently enlarged their jurisdiction, and now, in all cases in which property accrues to the wife after marriage, she is entitled, on application, to a share of it in settlement if adequate provision has not been previously made, or if other circumstances warrant it.]

But though Courts of Equity have prevented hardships, exceptional mitigations from such sources can afford no just apology for the retention of laws radically wrong in principle, nor is it for judges to supply or correct the omissions of the legislature. Indeed, the very existence of two independent jurisdictions administering the law of a country is an anomaly, for which it is impossible to find anything but a temporary justification. The system of uses and trusts, on which English professional reputation has been so much based, has only served to render complicate the rights of parties. Forbidden by the French Code, they are, notwithstanding the prestige of centuries, no longer admissible in several of the United States. Though innovations were introduced by the prætors which relaxed the severity of the decemviral laws, yet the equity of Rome, to which it has been attempted to assimilate the English Chancery jurisdiction, even when most distinct from the Civil Law, was always administered by the same tribunals. The prætor was the chief Equity judge, as well as the great Common Law magistrate, and the Roman law, such as it has come down to us from Justinian, consists of one uniform system.

There is this great difference between the contracts elsewhere made and English marriage settlements, that the former, whether they refer to any known *regime* or contain special provisions, are made between the actual parties, and do not require the interposition of third persons, or trustees, on whose solvency and fidelity the rights and interests of the woman may essentially depend. By the law of England and of the States of the American Union, whose jurisprudence is based on the Common Law, we well know that all the real estate of the wife is during marriage under the absolute control of the husband, and that he is entitled to the entire profits. In the case that a child has at any time been born during the marriage, he is entitled to the entire property during his own life. The ancient law provided some protection for the wife's interest in the very inability of the transfer of her real estate, but that is now removed by the Act of 3 & 4 Will. IV, c. 74, which, without giving her any control over the proceeds, authorizes a married woman with the concurrence of her husband to dispose of her real estate by deed. Of terms of years or leasehold property, the husband is not only entitled to the profits and management of them during his life, but he may dispose of them by any act during coverture, and if he survive her they are absolutely his. The only restriction on the husband's absolute property is that he cannot bequeath them by will, and that

in case he has made no disposition of them and his wife survives him they remain to her by her original title, and do not go to his executors. As to the personal chattels of the wife belonging to her at marriage or accruing to her during coverture, they become absolutely her husband's, and such is practically the case as to choses in action, unless he dies before they are reduced to possession. If she dies first they are not less absolutely his, in consequence of the technicality interposed of his taking them as administrator. We find enumerated among the exceptions to the absolute right of the husband to his wife's property, her *paraphernalia*. We must not however confound that term as employed in the English law with the paraphernal property in the continental codes to which we have alluded. In the English law it only means her best apparel and ornaments suited to her degree, *if not disposed of by her husband in his lifetime.*

From the very restricted provisions of the recent Acts of Parliament, passed for the relief of married women, we may clearly infer the difference of policy between the English and the continental legislation. The relief thus provided is merely that, if the husband *deserts* his wife without reasonable cause, she may obtain from the justices at petty sessions, or from the Judge Ordinary, an order, under which any money or property she may acquire by her own lawful industry or become possessed of after his *desertion*, will be protected, and belong to her as if she were a *feme sole*. Even in the last edition of Stephen's Commentaries, dower is enumerated among the compensatory advantages given to woman for the abandonment of all her rights of property and person. It is true, the paragraph says, as to it, "unless some step has been taken to defeat or abridge her right." Dower, under the Common Law, at a time when property was almost exclusively confined to real estate, was a most important provision for a married woman who should survive her husband. But when personal property came to constitute a large portion of the accumulated wealth of the country, instead of endowing the wife from it also, her interests in her husband's stocks and other money investments was left to depend on intestacy or his inclination, as evinced by testamentary dispositions, while the old Common Law right in his real estate has been practically abrogated. By the Common Law, as it formerly existed, a widow was entitled to the third part in value of all lands and tenements of which her husband was seized at any time during coverture, and which any

issue that he might have had by her might have by possibility inherited. And such is generally the law in America to this day, as to all property held by the husband, in the conveyance of which the wife has not united. Indeed, I notice in the Act passed in Michigan, in 1867, that the wife expressly retains her Common Law right of dower, while the husband loses his Common Law right of curtesy; and I am not aware of a single case in which, in giving her the control over her own property, the rights previously existing on the property of her husband have been taken from her. It is worthy of note that, by the General Statutes of Massachusetts, the consideration paid the wife for releasing dower is put on the same footing with her earnings, both being made her separate property.

In 1836 an Act of Parliament was passed, by which, without making any equivalent for it, it was provided that all dispositions of a husband's land (whether absolute or partial, and whether by conveyance in his lifetime or by will), and all debts and incumbrances to which such land might be subject, should be valid and effectual, as against the right to dower.

That it is men, not women, who make the laws, may be inferred from the fact that, while dower was virtually abrogated, the incumbrance arising from the tenancy by curtesy was retained. Indeed, we find it preserved in the existing bill, for which, as respects marriages hereafter to be concluded, it is difficult to suggest a reason. Why not, at all events, place the curtesy of the husband on the same terms as the dower of the wife, which the husband may exclude by testament, while the curtesy still extends to any real estate to which the wife may be entitled at her death?

The provision as to personal property in case of the death of the wife intestate, in giving to the husband the same distributive share as the wife would take in case of his death, seems to be an improvement on the Acts passed by the American States. They, in many cases, leave the old laws untouched, so that in such cases the husband gets the whole.

The general features of the Married Women's Property Bill are that a married woman shall be capable of holding, acquiring, alienating, devising and bequeathing real and personal property, and of suing and being sued as if she were a *feme sole*.* Having the

* [Reference is made to the proposed bill of 1869, which did not become a law. The effect of the act of 33 and 34 Vict., c. 93, 1870, is of a much more limited character. By it, the wages and earnings of any married woman acquired after the

same Common Law, the States of the American Union may have with England a reciprocal advantage of learning, by the experience of one or other country, the effect of any change in legislature before adopting it itself. It was only in 1840, that Vermont set the example of derogating from the marital claims to the wife's property. That example has been followed by a very large portion of the other States of the Union.

The very full investigation before the Committee, and which will be found in the report on the Married Women's Property Bill, renders it unnecessary to examine the laws of the different States in

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passage of the act, in any employment, occupation or trade, carried on separately from her husband, or any money or property acquired through the exercise of any literary, artistic or scientific skill, are to be deemed property, held and settled to her separate use, independent of her husband, and her receipts to be a good discharge. Government annuities and deposits in savings banks, in the name of a married woman, or of a woman who shall marry after the grant or deposit, shall be paid to her as if she were unmarried. Similar provisions may be made as to married women's property in the public funds, in joint stock companies and in industrial and provident societies.

Personal property coming to a woman after marriage, not exceeding £200, under a deed or will, shall belong to her for her seperate use, as also the rents and profits of any freehold, copyhold or customaryhold property, which shall descend upon a married woman, and provisions are made for deciding, in a summary way questions arising between husband and wife, in relation to proportion declared to separate property.

A married woman may effect policy upon her own life or upon the life of her husband, for her separate use. A policy of insurance effected by any married man on his own life, and expressed upon the face of it to be for the benefit of his wife and children or any of them, shall enure and be deemed to be a trust for the benefit of his wife for her seperate use, and of his children, not subject to the control of the husband or his creditors, and not to form part of his estate. If it shall be proved that the policy was effected and premiums paid by the husband, with intent to defraud his creditors, they shall be entitled to receive out of the sum secured an amount equal to the premiums so paid.

A married woman may maintain an action for any wages, money and property declared to be her separate property.

A husband not to be liable, in case of any marriage after the act comes in operation, for the wife's debts contracted before marriage, but she is liable to be sued for them, and her separate property is liable for them.

A married woman having a separate property, is liable to the parish for the maintenance of her husband, and also to such liability for the maintenance of her children as a widow is now by law subject to, provided that this shall not relieve her husband from any liability at present imposed upon him by law to maintain her children.]

detail. I will merely refer to those of New York, as being the most important State, and the one with which citizens of other countries are most brought in contact. An Act passed as early as 1840, amended in 1866, allows a married woman to effect insurance in her own name or in the name of a third person for her sole use on the life of her husband, the amount to be payable to her on his death or to her children in case of predecease, free from the husband's representatives or creditors. The only restriction is that the exemption shall not apply where the amount of premium annually paid *out of the funds of the* husband exceeded three hundred dollars.

By the Act of 1848, it was declared that the "real and personal property of any female, who may hereafter marry, and which she shall own at the time of marriage, and the rents, issues and profits thereof shall not be subject to the disposal of her husband, nor be liable for his debts, and shall continue her sole and separate property as if she were a single female. The real and personal property, and the rents, issues and profits thereof, of any female now married, shall not be subject to the disposal of her husband, but shall be her sole and separate property as if she were a single female, except so far as the same may be liable for the debts of her husband heretofore contracted. Any married female may take by inheritance, or by gift, grant, devise or bequest from any person other than her husband, and hold to her sole and separate use, and convey and *devise real and personal property*, and any interest or estate therein, and the rents, issues and profits thereof, in the same manner and with like effect as if she were unmarried, and the same shall not be subject to the disposal of her husband nor be liable for his debts."

By the subsequent Acts of 1860 and 1862, it was declared "the property both real and personal, which any married woman now owns, as her sole and separate property; that which comes to her by descent, devise, bequest, gift or grant; that which she acquires by her trade, business, labor or services, carried on or performed on her sole or separate account; that which a woman married in this State owns at the time of her marriage, and the rents, issues and proceeds of all such property, shall, notwithstanding her marriage, be and remain her sole and separate property, and may be used, collected and invested in her own name, and shall not be subject to the interference or control of her husband, or liable for his debts, except such debts as may have been contracted for the support of herself or her children by her as his agent. A married woman may bargain, sell, assign and trans-

fer her separate personal property, and carry on any trade or business, and perform any labor or services on her sole and separate account, and the earnings of any married woman from her trade, business, labor or services, shall be her sole and separate property, and may be used or invested by her in her own name." It is also provided that any married woman may convey her separate property, sue and be sued, and bring actions for injuries to her person or character in her own name. Her bargains are not binding on her husband. By an Act of 1862, the wife is made liable for costs for suits brought by her out of her separate estate, and a judgment in a suit brought against her may be enforced by an execution against her separate estate.

The mother's assent in writing is made necessary, with the husband's, to the binding of a child to service or to apprenticeship. An Act of 1851 allowed married women to vote at the election of directors or trustees of any incorporated company of which they may be stockholders. An Act passed in 1863 allows the wife to administer without the husband, under letters of administration.*

So long ago as the revision of the Statute Law which came into operation in 1830, the State of New York abolished the whole distinction between legal and equitable titles, declaring that by no devise shall there be a mere formal trust in land. Among the few purposes, however, for which express trusts were permitted, was that of receiving rents and profits of land, and applying them to the use of a pension for life or for a shorter period. An Act passed in 1849, enables married women, whose property, in compliance with the ancient legislation, was put in trust, and which was embraced in the above exception, to resume the control of it. It allows the conveyance to a married woman by the trustee of any property held in trust for her, on the request of the married woman, and a certificate of a justice of the Supreme Court as to the woman's capacity to manage her property. By the same Act it is declared that all contracts made between persons in contemplation of marriage shall remain in full force after such marriage takes effect.

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* [By act of 1867, married women are declared capable of acting as executrices, administratrices, or guardians of minors, and of receiving letters testamentary; or of administration, or of guardianship, as though they were single women; and their bonds, given upon the granting of such letters, shall have the same force and effect as though they were not married.]

. There is one comment which I would make, as well on your bill as on the American Acts. Where the husband took all his wife's property as well as his own, there was no one but himself to whom to look for defraying the expenses of the household. If her property is preserved to her, there is no reason why she should not contribute to the common *menage*. This is, in one form or other, the rule of continental Europe. In France, when the marriage is under the separation of goods, she is required to pay one-third.

The Italian law, however, in leaving all her property, in the absence of any contract to the contrary, declares the contribution shall be in proportion to the respective means of the husband and wife. To me, this appears the suitable rule.

It may not be irrelevant to state, as intimately connected with the subject of these remarks, that Statutes exempting *homesteads* from judicial sales now exist in a majority of the States of the American Union. Among others, in Ohio, Illinois, New York, Wisconsin, Massachusetts, Texas, Maine, California, Michigan, New Hampshire, Iowa, Vermont, and, in a qualified manner, in Mississippi, Pennsylvania, Indiana and Louisiana. In a number of the States—Texas, Wisconsin, Indiana and California—such exception has been made the subject of express constitutional provision. In all the States the *extent* of the ground of the homestead, or the *value*, is limited, sometimes both, and there is a restriction as to alienation; the husband, if married, being prohibited from selling or conveying the homestead, unless the wife concurs and signs the conveyance.

The leading object of the homestead exemption is to protect and preserve the home—"a home," according to the language of the decisions, "not for the husband alone, but for his wife and his children, a place where they may live in security beyond the reach of finance and fortune, and the demands of creditors." The provisions of the Act are especially designed to guard the wife and children against the neglect, the misfortunes, and the improvidence of the father and husband. The homestead policy has, moreover, a *political* bearing. "The design," says the Supreme Court of Texas, "is to protect citizens and families, not simply from destitution, but to cherish those feelings of independence so essential to the maintenance of free institutions." On the death of the husband, if the right of the homestead survives to the widow and family, the law will protect them in the enjoyment of such rights from unjust interference on the part of either the heirs-at-law or general creditors.

II.

The following abstract of the laws of different countries of Europe as to the tenure and descent of real estate, which we translate from our *Commentaire sur le Droit International*, tom. III, p. 82, seems requisite to complete the *pieces justificatives:*

The 6th of August, 1790, a decree of the Constituent Assembly pronounced the perpetual abolition of the *droits d'aubaine et de detraction*, without condition of reciprocity; and a second decree, of 13th April, 1791, admitted every alien, even not residing in France, to inherit and succeed to the property of a Frenchman.

By Article 726 of the Code Napoleon, an alien could not succeed to or inherit the property which his relative, whether alien or Frenchman, possessed in the territory of France, except in those cases in which a Frenchman might succeed to or inherit the property which his relative possessed in the country of the alien. And by Article 912, no one could dispose of his property by will or by gift *inter vivos* for the benefit of an alien, unless that alien was competent to dispose of his property for the benefit of a Frenchman.

But the law of 14th July, 1819, abolished the 726th and 912th Articles of the Code, in consequence of which all aliens now have the right of succeeding to or inheriting, disposing of and taking property of every description, in the same manner as Frenchmen, throughout the full extent of the kingdom, without any provision of reciprocity; but in case a succession is to be divided between foreign and French heirs, the latter shall take, from the property situated in France, a portion equal to the value of the property situated in a foreign country, from which they shall be in any way excluded by virtue of the laws or local customs.

The *droit d'aubaine*, pure and simple, exists nowhere in Europe since the British Naturalization Act of 1870, unless it be, when not controlled by treaty, in the Hanseatic towns of Lubeck, Bremen, and Hamburg; and those cities are subject to the laws as well as treaties which the North German Confederation may make. Some countries have, however, adopted the principle of the 726th Article of the Code Napoleon, which applied the rule of reciprocity to the *droit d'aubaine.*

An Ottoman law, of 18th June, 1867, accorded to foreigners, on the terms prescribed by it, the right of acquiring real property in Turkey.

The Constitution of the Confederation of North Germany (Empire of Germany) declares that there exists for all the federal territory a common citizenship, applying among other matters to the acquisition of real estate.

The *droit d'aubaine* was abolished in Belgium by the law of 27th April, 1865. By that law all aliens are put on the same footing as to the right of possessing and inheriting real property, as Belgians.

Aliens are permitted to acquire real and personal property in Prussia. They have the same rights as to inheritance and succession as the citizens of the country. There is no *droit de detraction* on the inheritances falling to aliens, unless the country of those aliens raises such a tax on the inheritance falling to aliens in their country.

In the Grand Duchy of Baden aliens are put on a footing of equality with the native subjects, as to the right of acquiring and possessing property of every description, real estate included.

The law is the same in Wurtemberg. The right of aliens to hold real estate is recognized in Saxony.

In Greece, foreigners can become proprietors, even when not residents in the country; but they cannot acquire real estate, or dispose of it, except in conformity with the laws of Greece.

In Russia aliens may, since 1860, possess real estate, and as proprietors of it, they are eligible to be elected members of the provisional assemblies.

In Switzerland, unless there are treaties, foreigners cannot acquire real estate in the different cantons, without the permission of the government of the canton in which it is situated.

In Bavaria the principle is, that the alien enjoys the same rights as the citizens of the country, the only exceptions being those prescribed by the laws, as where a royal ordinance applies the principle of reprisals, in consequence of the inconveniences to which Bavarian citizens may be subjected abroad, so far as affects persons belonging to the country that subjects them to those inconveniences.

In the Netherlands an alien is allowed to succeed by will or *ab intestat* to acquire by way of gift, so far as the same advantages are secured to the citizens of the Netherlands by the legislation of the country of the alien.

In Sweden, aliens belonging to the countries in which Swedes have the right of inheriting property, enjoy the same right, so that they may become proprietors of real and personal property in the kingdom; otherwise aliens cannot possess real or personal property in

Sweden without the special permission of the king. But it appears that there are no legal obstacles to aliens having the usufruct of real or personal property by lease or otherwise.

The Italian law, according to the new Civil Code, 1868, contains provisions somewhat peculiar. "An alien is admitted to the enjoyment of all the civil rights accorded to the citizen." Consequently there is no restriction on the acquisition of real estate by aliens. Immoveable property is declared to be subject to the law of the place where it is situated, and moveable property to the law of the nation of the owner; but, contrary to the rule elsewhere existing as to the transmission of real estate, the successions, whether fixed by law (*légitimes*) or testamentary, in whatever concerns the order of succession, the apportionment of the rights of succession, and the intrinsic validity of the dispositions, whatever may be the nature of the property, or the country in which it is found, are regulated by the law of the nation of the decedent, whose inheritance is opened. (Code Italien, Dispositions Générales, Articles 7 and 8.) *

By the Naturalization Act of 1870, all restrictions upon aliens are abolished in Great Britain. Real and personal property of every description may be taken or acquired, held and disposed of, by an alien, in the same manner in all respects as by any natural born British subject.

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* If the foreign law is to govern in the case of a citizen of New York dying possessed of real estate in Italy, leaving descendants of a daughter by a marriage with an Italian citizen, would not the result of the provision of the Italian Code be to exclude the descendants of the decedent, though citizens of the country where the real estate is situated, and give the property to his relatives, however remote, competent to take real estate under the laws of New York? Assuredly the Italian jurists, who made the Code, never could have imagined the existence of a system of disinherison so cruel as that which prevails in New York.

ADDENDA.

Page 55.—Governor Hoffman, in his message at the commencement of the session of 1872, earnestly recommended the immediate passage of an act abrogating the disabilities of the descendants of American women married abroad, and calling the attention also of the Legislature to the action of Congress and of the treaty-making power of the Federal government, which made, as it were, necessary the repeal of all distinctions as to the holding of real estate by aliens.

In conformity with the Governor's recommendation, an act substantially the same as the second one suggested by us, at p. 55, was passed.

AN ACT *to authorize the descent of real estate to female citizens of the United States and their descendants, notwithstanding their marriage with aliens.*—Passed March 20th, 1872, by a two-third vote.

The people of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. Real estate in this State now belonging to, or hereafter coming or descending to, any woman born in the United States, or who has been otherwise a citizen thereof, shall upon her death, notwithstanding her marriage with an alien and residence in a foreign country, descend to her lawful children of such marriage, if any, and their descendants, in like manner and with like effect, as if such children or their descendant were native-born or naturalized citizens of the United States. Nor shall the title to any real estate now owned by, or which shall descend, be devised or otherwise conveyed to such woman, or to her lawful children, or to their descendants, be impaired or affected by reason of her marriage with an alien, or the alienage of such children or their descendants.

SECTION 2. This act shall take effect immediately.

This act, of course, leaves untouched the anomalies in the laws of New York, as to aliens generally, created as well by previous imperfect attempts at revision of the Statutes, as by the expatriation act of Congress and the treaties of the United States with foreign powers,

which we have discussed. To the importance of the abrogation of all alien disabilities our remarks remain as applicable as if a partial reform had not been effected.

Page 98.—To the naturalization treaties with foreign powers is to be added the convention with Sweden and Norway, of May 26, 1869, of which the ratifications were exchanged 14th June, 1871, and which, with the protocol annexed, ratified by the Senate, was promulgated 3d January, 1872.

Page 101.—By the laws of Iowa, March 31, 1868, and April 8, 1868, "All aliens, whether they reside in the United States or in any foreign country, may, in this State, acquire, hold and enjoy property, personal or real, or any interest therein, by purchase, gift, devise or descent, and may convey, mortgage or devise the same in a like manner, and with the same effect, as if such aliens were native born citizens of the United States. And all property, real or personal, situated in this State, and belonging to a foreigner, shall, if not disposed of by will, after the death of the owner, descend to the heirs of such foreigner, whether the same reside in the United States or in any foreign country. Such heirs shall be the same as the heirs at law of native-born citizens."—Laws of Iowa, 1868, pp. 62, 178.

ERRATA.

Page 29, line 18, *for* power *read* prince.

Page 32, last line of note, *for* Vol. XI *read* Vol. IV.

Page 37, line 3, *for* naturalization *read* nationality.

Page 42, line 22, *for* devised *read* derived.

Page 61, line 19 of note, *for* honoraries *read* honoraires.

Page 66, line 3, *for* alienation *read* allegiance.

Page 66, line 19, *for* 1879 *read* 1870.

Page 67, last line, *for* Internationale *read* International.

Page 70, insert at the end of Art I.—Convention with Bavaria.—The declaration of an intention to become a citizen of the one or the other country, has not for either party the effect of naturalization.

Page 109, last line, *for* February 6, 1778, *read* July 7, 1798.

Page 138, note line 15, *for* in relation to proportion declared to separate property, *read* in relation to property declared to be separate property.